

## Equal Pay Provision of the New York State Labor Law

### Article 6, Section 194

#### § 194. Differential in rate of pay because of sex prohibited.

1. No employee shall be paid a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, except where payment is made pursuant to a differential based on:

- a. a seniority system;
- b. a merit system;
- c. a system which measures earnings by quantity or quality of production; or
- d. a bona fide factor other than sex, such as education, training, or experience. Such factor:
  - (i) shall not be based upon or derived from a sex-based differential in compensation and
  - (ii) shall be job-related with respect to the position in question and shall be consistent with business necessity. Such exception under this paragraph shall not apply when the employee demonstrates
    - (A) that an employer uses a particular employment practice that causes a disparate impact on the basis of sex,
    - (B) that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and
    - (C) that the employer has refused to adopt such alternative practice.

2. For the purpose of subdivision one of this section, "business necessity" shall be defined as a factor that bears a manifest relationship to the employment in question.

3. For the purposes of subdivision one of this section, employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same geographical region, no larger than a county, taking into account population distribution, economic activity, and/or the presence of municipalities.

4. (a) No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee.

(b) An employer may, in a written policy provided to all employees, establish reasonable workplace and workday limitations on the time, place and manner for inquires about, discussion of, or the disclosure of wages. Such limitations shall be consistent with standards promulgated by the commissioner and shall be consistent with all other state and federal laws. Such limitations may include prohibiting an employee from discussing or disclosing the wages of another employee without such employee's prior permission.

(c) Nothing in this subdivision shall require an employee to disclose his or her wages. The failure of an employee to adhere to such reasonable limitations in such written policy shall be an affirmative defense to any claims made against an employer under this subdivision, provided that any adverse employment action taken by the employer was for failure to adhere to such reasonable limitations and not for mere inquiry, discussion or disclosure of wages in accordance with such reasonable limitations in such written policy.

(d) This prohibition shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee's essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge, or in furtherance of an investigation, proceeding, hearing, or action under this chapter, including an investigation conducted by the employer.

(e) Nothing in this section shall be construed to limit the rights of an employee provided under any other provision of law or collective bargaining agreement.

For questions, write or call your nearest office, (listed below), of the:

**New York State Department of Labor  
Division of Labor Standards**

**Albany District**  
State Office Campus  
Bldg. 12, Rm. 185A  
Albany, NY 12240  
(518) 457-2730

**Binghamton Sub-district**  
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**Buffalo District**  
65 Court Street, Rm. 202  
Buffalo, NY 14202  
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**Garden City District**  
400 Oak Street, Suite 101  
Garden City, NY 11530  
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**New York City District**  
75 Varick Street, 7th Floor  
New York, NY 10013  
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276 Waring Road, Rm. 104  
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**Syracuse District**  
333 East Washington Street,  
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**White Plains District**  
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