

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 11, 2013
Bill No: HB 216 (CS)--305

Sponsor: House Labor & Human Resources Committee
Short Title: Fair Pay for Woman Act

Reviewing Agency: Attorney General's Office
Person Writing: Sally Malavé
Phone: 827-6031 **Email:** smalave@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: The House Labor & Human Resources current substitute of House Bill 216 (CS 216) enacts the Fair Pay for Women Act (FPWA), which prohibits wage discrimination on the basis of sex on jobs the performance of which requires equal skill, effort, responsibility and performed under similar working conditions, except where wages are based on a seniority system, merit system, or system that measures earnings based on quality or quantity of production. CS 216 also makes it unlawful to retaliate against a person in the terms or conditions of employment for asserting a claim under the FPWA. CS 216 does not allow an employee to waive by agreement rights afforded under the FPWA in exchange for a specific wage that may be in violation of the FPWA.

CS 216 allows a complainant to (1) initiate an action in district court to establish liability and recover damages on behalf of themselves and for other similarly situated employees, or such employee may designate an agent or representative to bring an action of behalf of all similarly situated employees; or (2) seek relief under the Human Rights Act pursuant to the process set out in Section 28-1-10 through 28-1-13.

The statute of limitations under CS 216 is six (6) years from the date of discovery of the violation. A person claiming to be aggrieved under the FPWA need not exhaust administrative remedies, but if she chooses to seek relief under the Human Rights Act, the initiation of the administrative process shall toll the statute of limitations for initiating a claim under the FPWA.

CS 216 contains an enforcement/penalty provision that makes an employer who violates a provision of the FPWA liable to the affected employee for damages and equitable relief, including employment, reinstatement and promotion. Damages shall be calculated based on (1) the affected employee’s unpaid wages and the damages for retaliation, if any; and (2) all other actual damages. An employer may also be found liable to the employee for treble damages or punitive damages. Recovery of unpaid wages is limited to six (6) years prior to the date of the last violation of the FPWA. An employee bringing a lawsuit in district court will not be required to pay any filing fee or other court costs necessarily incurred in such proceedings. A prevailing plaintiff will be allowed to recover costs of the action and reasonable attorney’s fees, in addition to any judgment awarded by the court.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL Currently, the AGO assigns two attorneys to provide counsel to the HRC and one attorney to provide counsel to the HRB. Enactment of this bill may require additional expenditure of resources, depending on the volume

of cases brought under the proposed FPWA.

SIGNIFICANT LEGAL ISSUES CS 216 provides that the statutes of limitations for an action arising under the FPWA shall be six (6) years from the date of discovery of the violation. This statute of limitations applies to actions initiated in district court and to complaints filed with the Human Rights Bureau pursuant to the process set out in Sections 28-1-10 through 28-1-13. As such, it is not clear why a complaint filed with the Human Rights Bureau would toll the statute of limitations for bringing an action in district court.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL Currently, the AGO assigns two attorneys to provide counsel to the HRC and one attorney to provide counsel to the HRB. Enactment of this bill may require additional expenditure of time and resources to train the clients in the FPWA's implementation, depending on the volume of cases brought under the proposed FPWA.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION Current substitute for HB 216, which was a duplicate of SB 402.

TECHNICAL ISSUES OR DRAFTING ERROR Page 4, lines 15 through 19 should be deleted to avoid confusion regarding the statute of limitations for administrative or civil actions brought under the FPWA.

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo. Persons who believe they have been discriminated against on the basis of sex in their compensation currently may file a claim under the Human Rights Act.

AMENDMENTS NEEDED TO IMPROVE THIS BILL