

<b>LFC Requester:</b>	<b>Mimi Aledo</b>
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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** January 24, 2013  
**Bill No:** House Bill 216--305

**Sponsor:** Rep. Brian F. Egolf  
**Short**    Fair Pay Act for Women  
**Title:**    \_\_\_\_\_

**Reviewing**    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)**

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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: House Bill 216 enacts the Fair Pay for Women Act (FPWA), making it unlawful for an employer to discriminate on the basis of sex in compensation for equal work on jobs the performance of which requires equal skill, effort, responsibility and performed under similar working conditions, except where payment is made pursuant to a seniority system, merit system, system that measures earnings based on quality or quantity of production, or differential based on any factor other than sex. HB 216 also makes it unlawful to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for asserting a claim under the FPWA. The grievance and hearing procedures for bringing a claim under the Fair Pay Act for the most part track the grievance and hearing procedures set out in the New Mexico Human Rights Act, NMSA 1978, §§ 28-1-1 through 28-1-15 (HRA). Complaints filed under FPWA must be filed within one year from the date of discovery of the alleged violation. Within one year from the date of filing of the complaint by an aggrieved employee, the Human Rights Commission (HRC) or the director of the Human Rights Bureau (HRB) are mandated to (1) dismiss the complaint for lack of probable cause; (2) achieve satisfactory adjustment of the complaint as evidenced by an order of the Commission; or (3) issue a written right to sue order and notice. As provided in the HRA, an employee may seek a trial de novo in the district court in lieu of a hearing before the HRC by requesting a waiver of the employee’s right to hearing within sixty days of service of the probable cause determination issued by the HRB director.

House Bill 216 contain an enforcement/penalty provision that makes an employer who violates a provision of the FPWA liable to the affected employee in an amount (1) the affected employee’s unpaid wages from the date of the violation to the date of the filing of the claim; (2) actual damages; (3) punitive damages. It also contains a separate penalty provision for retaliation claims, in an amount up to fifty thousand dollars (\$50,000). HB 216 seems to authorize a private right of action to establish liability and recover damages by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated.

The proposed FPWA differs from the HRA in several ways. The FPWA defines an “employer” as an entity “employing fifteen or more persons who work more than thirty hours per week . . .” The HRA defines “employer” as “any person employing four or more persons and any person acting for an employer.” The statute of limitations for filing a claim under the FPWA is one year from the date of discovery of the alleged violation; under the HRA three hundred (300) days after the alleged act was committed.

**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** House Bill 216 does not make clear how far back an aggrieved employee can go to establish liability. While the statute of limitations for bringing a claim under the FPWA is one year from the date of discovery of the alleged violation, the penalty provision allows for awarding an aggrieved employee unpaid wages from the date of the violation, which may have occurred years or even decades before discovery of the violation, to the date of the filing of the complaint. It also is not clear whether the penalty provision for retaliation is to be applied in addition to or in lieu of the penalty provision that allows for actual and punitive damages. It is not clear whether the right of action contemplated under subsection B of the enforcement/penalties provision may be initiated in a district court before exhausting the administrative remedies provided by the act.

**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 act'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** None

**TECHNICAL ISSUES OR DRAFTING ERROR**

**OTHER SUBSTANTIVE LEGAL ISSUES**

**ALTERNATIVES TO ENACTING THIS BILL** Amend the HRA to (1) include discrimination in compensation on the basis of sex as unlawful discriminatory practice; (2) establish a statute of limitations for complaints filed under this provision, if different than; (3) add a damages provision that codifies the types of damages that may be awarded for this and all other types of claims brought under the HRA; (4) determine whether the private right of action contemplated by the FPWA can or should be considered for other types of discrimination claims and amend HRA accordingly.

**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 HRA.

**AMENDMENTS NEEDED TO IMPROVE THIS BILL**