

# HOUSE BILL NO. 5349

September 29, 2021, Introduced by Reps. Kuppa, Stone, Hood, Weiss, Aiyash, Cavanagh, Young, Manoogian, Neeley, Bolden, Pohutsky, Rogers, Steckloff, Hope, Brabec, Sowerby, Haadsma, Koleszar, Brixie, Morse, Breen, Tyrone Carter, Puri, Ellison, O'Neal, Cherry, Sneller, Thanedar, Scott, Lasinski and Anthony and referred to the Committee on Workforce, Trades, and Talent.

A bill to amend 1976 PA 453, entitled  
"Elliott-Larsen civil rights act,"  
by amending section 202 (MCL 37.2202), as amended by 2009 PA 190.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 202. (1) An employer shall not do any of the following:  
2           (a) Fail or refuse to hire or recruit, discharge, or otherwise  
3 discriminate against an individual with respect to employment,  
4 compensation, or a term, condition, or privilege of employment,  
5 because of religion, race, color, national origin, age, sex,  
6 height, weight, or marital status.

1 (b) Limit, segregate, or classify an employee or applicant for  
2 employment in a way that deprives or tends to deprive the employee  
3 or applicant of an employment opportunity, or otherwise adversely  
4 affects the status of ~~an~~**the** employee or applicant, because of  
5 religion, race, color, national origin, age, sex, height, weight,  
6 or marital status.

7 (c) Segregate, classify, or otherwise discriminate against a  
8 ~~person~~**an individual** on the basis of sex with respect to a term,  
9 condition, or privilege of employment, including, but not limited  
10 to, a benefit plan or system.

11 (d) Treat an individual affected by pregnancy, childbirth, or  
12 a related medical condition differently for any employment-related  
13 purpose from another individual who is not so affected but similar  
14 in ability or inability to work, without regard to the source of  
15 any condition affecting the other individual's ability or inability  
16 to work. For purposes of this subdivision, a medical condition  
17 related to pregnancy or childbirth does not include nontherapeutic  
18 abortion not intended to save the life of the mother.

19 (e) **Pay any of its employees who are members of a protected**  
20 **class at a rate of compensation, including benefits, that is less**  
21 **than the rate paid by the employer to employees who are not members**  
22 **of the protected class for substantially similar work, when viewed**  
23 **as a composite of skill, effort, and responsibility. For the**  
24 **purpose of determining an employer's compliance with this**  
25 **subdivision, comparisons of wage rates must be based on wage rates**  
26 **in all of the employer's operations or facilities. An employer that**  
27 **is paying a rate of compensation in violation of this subdivision**  
28 **shall not reduce the rate of compensation of any employee in order**  
29 **to comply with this subdivision. An employer may pay a different**

1 rate of compensation only if the employer demonstrates that the  
2 differential is made pursuant to a seniority or merit system, or if  
3 the employer demonstrates all of the following:

4 (i) The differential is based on 1 or more legitimate, bona  
5 fide factors other than the characteristics of members of the  
6 protected class, such as training, education or experience, or the  
7 quantity or quality of production.

8 (ii) The factor or factors are not based on, and do not  
9 perpetuate, a differential in compensation based on any  
10 characteristic of members of a protected class.

11 (iii) Each of the factors is applied reasonably.

12 (iv) One or more of the factors account for the entire wage  
13 differential.

14 (v) Each of the factors is job-related with respect to the  
15 position in question and based on a legitimate business necessity.  
16 A factor based on business necessity does not apply if it is  
17 demonstrated that there are alternative business practices that  
18 would serve the same business purpose without producing the wage  
19 differential.

20 (2) This section does not prohibit the establishment or  
21 implementation of a bona fide retirement policy or system that is  
22 not a subterfuge to evade the purposes of this section.

23 (3) This section does not apply to the employment of an  
24 individual by his or her parent, spouse, or child.

25 (4) This section's prohibition of discrimination against an  
26 individual because of the individual's sex includes a prohibition  
27 of discrimination against an individual because of the individual's  
28 sexual orientation or gender identity.

29 (5) This section's prohibition of discrimination against an

1 individual because of the individual's marital status includes a  
2 prohibition of discrimination against an individual because of the  
3 individual's civil union status.

4 (6) As used in this section, "member of a protected class"  
5 means an employee who has 1 or more characteristics, including  
6 religion, race, color, national origin, age, sex, sexual  
7 orientation, gender identity, height, weight, marital status, or  
8 civil union status, reliance on which subsection (1) (a) prohibits  
9 as an employer's basis for discriminating against an individual  
10 with respect to employment, compensation, or a term, condition, or  
11 privilege of employment.