

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

<p>ERIN DINDINGER, LISA LORING, and ELIZABETH FREUND,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>ALLSTEEL, INC., and SCOTT MILLS,</p> <p style="text-align: center;">Defendants.</p>	<p>No: 3:11-cv-00126-SMR-CFB</p> <p style="text-align: center;">RULING GRANTING DEFENDANTS' MOTION TO CERTIFY QUESTION TO IOWA SUPREME COURT, AND ORDER FOR SUBMISSIONS</p>
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Plaintiffs Erin Dindinger and Elizabeth Freund, former employees of defendant Allsteel, Inc. (“Allsteel”), and plaintiff Lisa Loring, a current employee of Allsteel, bring this action against Allsteel and defendant Scott Mills, a vice president at Allsteel, pursuant to the Equal Pay Act of 1963 (29 U.S.C. § 206(d)); Title VII of the Civil Rights Act of 1964; and the Iowa Civil Rights Act (“ICRA”), Iowa Code Chapter 216.¹ This Court has federal question jurisdiction over the federal claims, 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367(a). Before the Court is defendants’ Motion to Certify Question to Iowa Supreme Court [ECF No. 86]. Plaintiffs filed a resistance [ECF No. 87], and defendants filed a reply [ECF No. 88]. The motion is fully submitted.

¹Specifically, the counts are listed in the Amended Complaint as follows: Count I alleges an Equal Pay Act violation against Allsteel by plaintiffs Dindinger, Loring, and Freund. Count II alleges a violation of Iowa Code § 216.6A, ICRA (equal pay), against now-dismissed defendant Hon and Allsteel by plaintiffs Dindinger and Loring. Count III alleges a Title VII violation against Allsteel by plaintiff Dindinger. Count IV alleges a violation of the ICRA against Allsteel and Mills by plaintiff Dindinger. Count V alleges a Title VII violation against Allsteel by plaintiff Loring. Lastly, Count VI alleges a violation of the ICRA against Allsteel by plaintiff Loring. Am. Compl. [ECF No. 11].

Included among plaintiffs' claims is Count II, alleging that Allsteel committed wage discrimination against plaintiffs Dindinger and Loring in violation of the ICRA, Iowa Code § 216.6A ("Section 216.6A"). This statute was approved by the Governor on April 28, 2009. *See* Iowa Code § 216.6A; 2009 Iowa Adv. Legis. Serv. 96. On March 26, 2013, the Court heard oral argument on Defendants' Motion for Summary Judgment on Dindinger's Claims in Counts III and IV [ECF No. 51], as well as on Defendants' Motion for Partial Summary Judgment [ECF No. 61]. At oral argument, the Court asked both sides whether certifying questions of Iowa law to the Iowa Supreme Court would be helpful. Both sides responded that their respective positions were clearly correct and that certification was not necessary. Defendants have reevaluated their position, and now argue that certification would aid in untangling the issue of whether Section 216.6A and its complementary subsection, Iowa Code § 216.15(9)(a)(9), apply retroactively to plaintiffs' claims. *See* Mot. to Certify Question to Iowa Supreme Court [ECF No. 86].²

I. BACKGROUND
A. Iowa Code Section 216.6A

Section 216.6A states in part that "an unfair or discriminatory practice occurs . . . when an individual is affected by application of a discriminatory pay decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice." Iowa Code § 216.6A(2)(b). The parties agree that under

²Defendants also initially argued in their motion for partial summary judgment [ECF No. 61] that plaintiffs' ICRA Section 216.6A recovery was limited to the period beginning 300 days before they filed their administrative complaints (i.e., that the Court should dismiss claims that accrued before December 14, 2010). Defendants withdrew this argument in their reply brief [ECF No. 75], however, and now contend that April 28, 2009, is the beginning of the potential recovery period.

the new provision, plaintiffs have 300 days from each paycheck received to file a discrimination charge, and agree that each paycheck re-opens the entire discriminatory period. Additionally, Iowa Code § 216.15(9)(a)(9) provides for damages, court costs, reasonable attorney fees, and two times the wage differential paid to another employee compared to the complainant “for the period of time for which the complainant has been discriminated against[,]” or three times the wage differential for willful violations.

The fighting issue is whether or not these provisions are retroactive in application. “Legislative intent determines if a court will apply a statute retrospectively or prospectively.” *Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 266 (Iowa 2009) (citation omitted). “Generally, a newly enacted statute is presumed to apply prospectively, unless expressly made retrospective.” *Id.* (citations omitted). When a statute relates solely to remedy or procedure, however, a court can apply the statute both prospectively and retrospectively. *Id.* (citation omitted). In contrast, a statute that relates to a substantive right is ordinarily applied prospectively only, *id.* (citation omitted), unless by necessary and unavoidable implication, a legislative intent that it be applied retrospectively clearly appears. *Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 579 (Iowa 2009) (quotation omitted). This Court is guided by a two-step process outlined by the Iowa Supreme Court:

The first step in determining if a statute applies retrospectively, prospectively, or both is to determine whether the legislature expressly stated its intention. . . . In the absence of a legislative declaration that the statute applies retrospectively, the second step of the analysis is to determine whether the statute is procedural, remedial, or substantive. A substantive statute creates, defines and regulates rights whereas a procedural law is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective. A remedial statute intends to correct existing law or redress an existing grievance.

Iowa Beta Chapter of Phi Delta Theta Fraternity, 763 N.W.2d at 266 (internal quotations and quotation omitted). If a statute is remedial, retrospective operation is presumed, but the Iowa Supreme Court employs a three-part test to determine if retroactive application is consistent with legislative intent. *Anderson Fin. Servs., LLC*, 769 N.W.2d at 579 (citations omitted). “We examine the language of the act, consider the manifest evil to be remedied, and determine whether there was an existing statute governing or limiting the mischief which the new act is intended to remedy.” *Id.* at 579-80 (quotation and citations omitted). Unfortunately, determining whether Section 216.6A is procedural, remedial, or substantive is not an easy task.

B. Existing Law Interpreting Section 216.6A and Other Relevant Case Law

Neither the Iowa Supreme Court nor the Iowa Court of Appeals has decided whether Section 216.6A is retroactive. Section 216.6A has been interpreted, however, by at least one federal judge in four cases decided the same day. In *Lenius v. Deere & Co.*, No. C12-2063, 2013 U.S. Dist. LEXIS 21143, at *23-24 (N.D. Iowa Feb. 14, 2013), Chief Magistrate Judge Jon Scoles decided that the law is substantive, not remedial, because it created, defined, and regulated a new right. “The statute was specifically enacted on public policy grounds to address wage discrimination in the workplace[,]” and it “does not ‘correct’ or ‘redress’ any relief previously available to employees under Iowa’s civil rights laws.” *Id.* at *24 (citations omitted). Judge Scoles observed that there is no language in Section 216.6A which expressly states or implies that the legislature intended the statute to be applied retroactively. *Id.* Therefore, the court concluded that the statute should only be applied prospectively, not retrospectively, so liability and damages for wage discrimination predating the enactment of Section 216.6A were not allowed. *Id.* at *24-27 (citations omitted); *see also Sellers v. Deere & Co.*, No. C12-2050,

2013 U.S. Dist. LEXIS 20389, at *19-25 (N.D. Iowa Feb. 14, 2013) (same); *Rebouche v. Deere & Co.*, No. C12-2064, 2013 U.S. Dist. LEXIS 20390, at *5-12 (N.D. Iowa Feb. 14, 2013) (same); *Forster v. Deere & Co.*, No. C12-2072, 2013 U.S. Dist. LEXIS 21156, at *18-25 (N.D. Iowa Feb. 14, 2013) (same).³

Countering Judge Scoles's interpretation of Section 216.6A are cases indicating the ICRA prohibited wage discrimination prior to 2009. *See, e.g., Dutcher v. Randall Foods*, 546 N.W.2d 889, 892 (Iowa 1996) (stating that Randall did not file a cross-appeal and therefore "we accept as established that Randall violated the Equal Pay Act and the Iowa Civil Rights Act by paying Dutcher less than males in comparable positions"); *Inglis v. Buena Vista Univ.*, 235 F. Supp. 2d 1009, 1018-19 (N.D. Iowa 2002) (stating that where a claim is for unequal pay for equal work based upon sex, the standards of the Equal Pay Act apply whether the suit alleges a violation of the Equal Pay Act or of Title VII, and the "same standards also apply to pay claims brought pursuant to the ICRA" (quotation and citations omitted)); *Leyen v. Wellmark, Inc.*, 94 F. Supp. 2d 1034, 1038-39 (S.D. Iowa 2000). These cases support a finding that Section 216.6A is remedial by correcting existing law or redressing an existing grievance; for example, by clarifying that "an unfair or discriminatory practice occurs . . . when an individual is affected by application of a discriminatory pay decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice." Iowa Code § 216.6A(2)(b). If the Court were to adopt this reasoning, the Court could simply find that Section 216.6A was following the lead of the Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, § 3, 123 Stat. 5, which amended 42 U.S.C. § 2000e-5(e) on January

³Plaintiffs argue, however, that these cases are distinguishable.

29, 2009, by adding language similar to that enacted three months later in Iowa Code § 216.6A(2)(b).

A case cited by plaintiffs, *State ex rel. Turner v. Limbrecht*, 246 N.W.2d 330 (Iowa 1976), *overruled on other grounds by State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 617, 622 (Iowa 1989) (*Hydro Mag, Ltd.* concluded that the Iowa Consumer Fraud Act was not merely a codification of common-law fraud, but provides broader protection by eliminating common-law fraud elements of reliance and damages), supports this argument. In *Limbrecht*, the Iowa legislature enacted a statute allowing the Attorney General to seek an injunction and restoration for consumer fraud, and the Iowa Supreme Court held that the statute was remedial—and therefore retroactive—because a harmed consumer could have previously brought an action for common law fraud. *Limbrecht*, 246 N.W.2d at 333-34. Under this analysis, like a consumer having a prior action for fraud, plaintiffs could have brought a wage discrimination claim under ICRA Section 216.6 before 2009, and the sections amended and added in 2009 may be viewed as simply affecting the procedure for bringing, and damages available for, such claims.⁴

C. Authority to Certify Issues to the Iowa Supreme Court

Local Rule 83 gives this Court the power to certify questions to the Iowa Supreme Court.

It provides as follows:

When a question of state law may be determinative of a cause pending in this court and it appears there may be no controlling precedent in the decisions of the appellate courts of the state, any party may file a motion to certify the question to the highest appellate court of the state. The court may, on such motion or on its own motion, certify the question to the appropriate state court.

⁴Defendants contend, however, that *Limbrecht* is distinguishable.

LR 83. Local Rule 83 largely tracks Iowa Code § 684A.1,⁵ which gives the Iowa Supreme Court the power to answer certified questions. A court posing a question to the Iowa Supreme Court must issue an order that: “set[s] forth the questions of law to be answered and a statement of facts relevant to the questions certified, showing fully the nature of the controversy in which the questions arose.” Iowa Code § 684A.3; *see also* Iowa Code § 684A.4 (“The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal.”). Whether to certify a question is within a federal court’s discretion. *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974).

II. SUMMARY OF ISSUES PRESENTED AND POSITIONS REGARDING CERTIFICATION

In defendants’ view, the issue is whether, despite an absence of express legislative language that makes Section 216.6A retroactive, a plaintiff may pursue equal pay claims under Section 216.6A that accrued before April 28, 2009, the effective date of the statute. Thus, defendants seek to certify the following question:

⁵Iowa Code § 684A.1 provides:

The supreme court may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or the highest appellate court or the intermediate appellate court of another state, when requested by the certifying court, if there are involved in a proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the appellate courts of this state.

See also Iowa Code § 684A.2 (“This chapter may be invoked by an order of a court referred to in section 684A.1 upon the court’s own motion or upon the motion of a party to the cause.”)

Does Iowa Code section 216.6A, Iowa's equal pay law, and the accompanying remedial language in section 216.15(9)(a)(9), apply to permit a plaintiff to pursue wage discrimination claims that accrued before April 28, 2009, the date Iowa's General Assembly made these statutes effective, in the absence of express legislative language making these laws retroactive?

Mot. to Certify Question to Iowa Supreme Court at 1, 4 [ECF No. 86].

Plaintiffs contend that the only retroactivity question at issue relates to the amount of damages they may recover. Plaintiffs assert that the question is not unsettled and certification is unnecessary, and resist defendants' motion to certify. Plaintiffs argue, inter alia, that this issue has been submitted to this Court for resolution, certification at this stage is not appropriate because the parties will have a right to appeal the issue, an answer from the Iowa Supreme Court would not be determinative of the cause, the certification process would cause undue delay, and defendants' motives for seeking certification are to cause such delay and select a more favorable forum. In the event that this Court determines that a question of law should be submitted to the Iowa Supreme Court, plaintiffs contend that the question should be limited as follows:

Whether the 2009 amendment to Iowa Code § 216.15(9) allowing for recovery of an amount equal to two times the wage differential paid to another employee compared to the complainant for the period of time for which the complainant has been discriminated against or in instances of willful violation, an amount equal to three times the wage differential paid to another employee as compared to the complainant for the period of time for which the complainant has been discriminated against allows recovery of double or treble damages for discrimination that occurred before 2009.

Pls.' Br. in Supp. of Resist. to Mot. to Certify Question to Iowa Supreme Court [ECF No. 87-1] at 12.

III. ANALYSIS OF CASE LAW AND THE PARTIES' ARGUMENTS

First, addressing plaintiffs' assertion that defendants have improper motives in moving to certify, the Court was the first to broach the subject of certifying a question or questions to the

Iowa Supreme Court. The issue of potential delay is a concern, but having a definitive answer to a question that governs a significant period of potential recovery under Section 216.6A and a significant amount of potential damages is a benefit that outweighs the downside of such a delay. Additionally, as defendants have submitted with their reply materials, recent history has shown that the Iowa Supreme Court is able to answer certified questions fairly quickly.

Plaintiffs' more compelling argument against certification is that an answer from the Iowa Supreme Court would not be "determinative of the cause then pending" as required by Iowa Code § 684A.1 in respect to plaintiffs' equal pay claims, because even if defendants get the answer they seek, there will still be a trial on the equal pay claims for alleged wage discrimination after 2009. Plaintiffs appear to contend that because the Iowa Supreme Court only answers certified questions that are potentially determinative of the entire case, or of an entire claim therein, certification would be a mistake. Defendants respond that because resolution of the proposed certified question is potentially dispositive of ten years of wage claims under Section 216.6A, it is "determinative." In defendants' view, this is not merely a question of damages. Parsing the text of the authorizing statute (Iowa Code § 684A.1), and reviewing Iowa Supreme Court precedent addressing certified questions, lead the Court to conclude that the Iowa Supreme Court should make the decision as to whether its power extends to answering questions that do not resolve an entire case, or even a single claim therein, but will determine whether a party is entitled to a significant period of potential recovery under Section 216.6A, and a substantially larger or smaller amount of potential damages. In short, it is up to the Iowa Supreme Court to consider whether it has historically been willing to answer questions that will not necessarily close a case, and whether or not to do so in this case.

The Court finds itself at a crossroads. The Court may opt to follow Judge Scoles’s non-precedential reasoning in *Lenius*, *Sellers*, *Rebouche*, and *Forster*, or instead determine that Section 216.6A is remedial by correcting existing law or redressing an existing grievance, and therefore presumptively retrospective. Either option offers well-reasoned and persuasive analysis. Given this split in relevant authorities, however, the Court believes that it would benefit from the guidance of the Iowa Supreme Court. Recognizing, of course, that the Iowa Supreme Court is the final authority on whether it has the power to answer a certified question and whether to exercise that power, the Court believes that the question defendants propose—which could affect plaintiffs’ ability to obtain Section 216.6A recovery and double or treble wage differentials for a substantial period of time prior to April 28, 2009⁶—should be certified to the Iowa Supreme Court. Defendants’ motion to certify therefore will be granted. To alleviate plaintiffs’ concern that the question as framed by defendants is too broad, the Court could add “under section 216.6A” in defendants’ question as follows: “Does Iowa Code section 216.6A, Iowa’s equal pay law, and the accompanying remedial language in section

⁶Plaintiffs’ beginning date for their alleged recovery under Section 216.6A is unclear. In the Amended Complaint, Count II alleges that plaintiff Dindinger received discriminatory wages from January 1996 through the time that she left her employment with Allsteel. Am. Compl. [ECF No. 11], ¶ 40. Count II also alleges that plaintiff Loring received discriminatory wages from 1999 through the present. *Id.*, ¶ 41. In their brief, however, defendants mention a beginning year of 1999 for plaintiff Dindinger, and 2005 for plaintiff Loring. Br. in Supp. of Mot. to Certify Question to Iowa Supreme Court [ECF No. 86-1] at 3. Plaintiffs later mention a beginning year of 2000 for plaintiff Loring, and 2005 for plaintiff Dindinger (which appear to have been reversed in error). Pls.’ Resist. to Mot. to Certify Question to Iowa Supreme Court [ECF No. 87] at 1. The difference in dates between the Amended Complaint and the briefs may be due to when plaintiffs worked for Allsteel as opposed to now-dismissed defendant Hon. *See* Am. Compl., ¶¶ 15, 16, 20, 21.

216.15(9)(a)(9), apply to permit a plaintiff to pursue wage discrimination claims **under section 216.6A** that accrued before April 28, 2009”

Although the Amended Complaint is not entirely clear, plaintiffs appear to be contending that notwithstanding Section 216.6A, under the ICRA in general, they may recover compensatory damages in this case for wage discrimination occurring before April 28, 2009. *See* Pls.’ Br. in Supp. of Resist. to Mot. to Certify Question to Iowa Supreme Court [ECF No. 87-1] at 11.

Because of this possibility, the Court is considering certifying a second, alternative question to the Iowa Supreme Court. One of the foundations for plaintiffs’ Section 216.6A retroactivity argument is their assertion that the ICRA already provided a vehicle to recover damages for wage discrimination occurring prior to April 28, 2009. Unless the Iowa Supreme Court concludes that Section 216.6A is retroactive for the entire course of discriminatory conduct, the availability and time frame for wage discrimination damages under Section 216.6 is an issue that this Court appears likely to face, assuming plaintiffs are seeking such damages. Plaintiffs allege that the Iowa Supreme Court never addressed the issue of the duration of back pay recoverable under the ICRA prior to the 2009 amendments, although the Southern and Northern Districts of Iowa reached different decisions. *Br. in Supp. of Pls.’ Resist. to Defs.’ Mot. for Partial Summ. J.* [ECF No. 70] at 21 n.12. Accordingly, on the Court’s own motion, the Court may certify the additional and alternative question of the availability and length of time for Section 216.6 wage discrimination damages. For example, the second question may state something like the following: “If the Iowa Supreme Court decides that Iowa Code sections

216.6A and 216.15(9)(a)(9) apply prospectively only, are wage discrimination damages available under Section 216.6, and if so, what is the available length of time for such damages?”

IV. RULING AND ORDER

With their motion, defendants have provided a concise statement of facts, as well as their proposed certified question. Before the Court certifies these questions to the Iowa Supreme Court, both sides shall submit a concise proposed statement of facts applicable to the certification questions and proposed language for the questions. *See* Iowa Code § 684A.3. Because the second certification question is raised by the Court sua sponte, the parties may also submit briefs on whether or not this question should be certified. From the parties’ submissions, the Court will prepare a certification order.

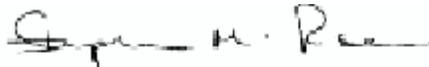
For the reasons articulated above, the Motion to Certify Question to Iowa Supreme Court filed by defendants Allsteel, Inc., and Scott Mills is **GRANTED** [ECF No. 86]. On or before **August 15, 2013**, both parties shall submit proposed language for certified questions to the Iowa Supreme Court addressing the issues discussed above, and shall additionally submit a concise proposed statement of the facts relevant to those questions. The parties may also submit briefs on whether or not the second question should be certified.

The costs of certification are to be shared equally by the parties. *See* Iowa Code § 684A.5 (“Fees and costs shall be the same as in civil appeals docketed before the supreme

court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.”).

IT IS SO ORDERED.

Dated this 26th day of July, 2013.

Handwritten signature of Stephanie M. Rose in black ink.

STEPHANIE M. ROSE
UNITED STATES DISTRICT JUDGE