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**SUBSTITUTE HOUSE BILL 1506**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Senn, Pellicciotti, Slatter, Macri, Peterson, Chapman, Ortiz-Self, Bergquist, Sawyer, Frame, Gregerson, Farrell, Kilduff, Kagi, Dolan, Clibborn, Pollet, McBride, Stanford, Doglio, Appleton, Robinson, Fitzgibbon, Sells, Goodman, Tharinger, Hudgins, Ormsby, Riccelli, Fey, and Pettigrew)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to workplace practices to achieve gender pay  
2 equity; amending RCW 49.12.175; adding a new chapter to Title 49 RCW;  
3 creating a new section; recodifying RCW 49.12.175; prescribing  
4 penalties; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that despite  
7 existing equal pay laws, there continues to be a gap in wages among  
8 workers in Washington, especially women. Women working full-time in  
9 Washington are paid eighty cents for every dollar earned by a man  
10 working the same job. The gap in earnings is even more disparate for  
11 women of color, who are paid sixty cents for every dollar earned by a  
12 white, non-Hispanic man.

13 According to census bureau data, forty percent of households with  
14 children under age eighteen in the United States rely on a woman as  
15 the leading or sole breadwinner. In addition, women hold a  
16 significant percentage of minimum wage jobs. Income disparities limit  
17 the ability of women to provide for their families, leading to higher  
18 rates of poverty among women and children.

19 The legislature finds that in order to establish equality among  
20 workers, employees in comparable jobs must be compensated as equals.  
21 The legislature finds that gaps in employee wages is a form of gender

1 discrimination. Policies that encourage retaliation or discipline  
2 towards workers who discuss or inquire about compensation prevent  
3 workers from moving forward.

4 The legislature intends to update the existing Washington state  
5 equal pay act, not modified since 1943, to address income  
6 disparities, employer discrimination, and retaliation practices, and  
7 to reflect the equal status of all workers in Washington state.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply  
9 throughout this chapter unless the context clearly requires  
10 otherwise.

11 (1) "Compensation" means discretionary and nondiscretionary wages  
12 and benefits provided by an employer to an employee as a result of  
13 the employment relationship.

14 (2) "Department," "director," "employee," and "employer" have the  
15 same meaning as defined in RCW 49.12.005.

16 **Sec. 3.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to  
17 read as follows:

18 (1) Any employer in this state(~~(, employing both males and~~  
19 ~~females, who shall discriminate in any way in the payment of wages as~~  
20 ~~between sexes or who shall pay any female a less wage, be it time or~~  
21 ~~piece work, or salary, than is being paid to males)) who~~  
22 discriminates in providing compensation based on gender between  
23 similarly employed(~~(, or in any employment formerly performed by~~  
24 males, shall be)) individuals is guilty of a misdemeanor. If any  
25 ((female)) employee ((shall)) receives less compensation because of  
26 ((being discriminated against)) discrimination on account of ((her  
27 sex, and)) gender in violation of this section, ((she shall be)) that  
28 individual is entitled to ((recover in a civil action the full amount  
29 of compensation that she would have received had she not been  
30 discriminated against)) the remedies in sections 7 and 8 of this act.  
31 In such action, however, the employer shall be credited with any  
32 compensation which has been paid to ((her)) the individual upon  
33 account.

34 (2) For purposes of this section, individuals are similarly  
35 employed if the performance of the job requires comparable skill,  
36 effort, and responsibility, and the jobs are performed under similar  
37 working conditions. Job titles alone are not determinative of whether  
38 individuals are similarly employed.

1        (3)(a) A differential in ((wages between employees)) compensation  
2 based in good faith on ((a factor or factors other than sex shall))  
3 any of the following does not constitute discrimination within the  
4 meaning of ((RCW 49.12.010 through 49.12.180)) this section:

5        (i) A seniority system;

6        (ii) A merit system;

7        (iii) A system that measures earnings by quantity or quality of  
8 production; or

9        (iv) A bona fide job-related factor or factors, including  
10 education, training, or experience, that is: (A) Consistent with  
11 business necessity; (B) not based on or derived from a gender-based  
12 differential; and (C) accounts for the entire differential.

13        (b) An individual's previous wage or salary history is not a  
14 defense under this section.

15        NEW SECTION. Sec. 4. (1) The legislature finds that equality of  
16 opportunity is key to reducing income disparities based on genders.  
17 The legislature further finds that using gender as a factor in career  
18 tracking, including making critical assignments that lead to  
19 advancement, contributes to pay inequity.

20        (2) An employer may not discriminate in providing employment  
21 opportunities based on gender. If any employee receives less  
22 favorable employment opportunities because of discrimination on  
23 account of gender, that employee is entitled to the remedies in  
24 sections 7 and 8 of this act.

25        (3) For purposes of this section, "less favorable employment  
26 opportunities" means:

27        (a) Assigning or directing the employee into a less favorable  
28 career track, if career tracks are offered, or position;

29        (b) Failing to provide information about promotions or  
30 advancement in the full range of career tracks offered by the  
31 employer; or

32        (c) Limiting or depriving an employee of employment opportunities  
33 that would otherwise be available to the employee but for the  
34 employee's gender.

35        (4) A differential in employment opportunities based in good  
36 faith on any of the factors in RCW 49.12.175(3)(a) (i) through (iv)  
37 (as recodified by this act) does not constitute discrimination within  
38 the meaning of this section.

1        NEW SECTION.    **Sec. 5.**    (1) An employer may not:

2            (a) Require nondisclosure by an employee of his or her wages as a  
3 condition of employment; or

4            (b) Require an employee to sign a waiver or other document that  
5 prevents the employee from disclosing the amount of the employee's  
6 wages.

7            (2) An employer may not discharge or in any other manner  
8 retaliate against an employee for:

9            (a) Inquiring about, disclosing, comparing, or otherwise  
10 discussing the employee's wages or the wages of any other employee;

11           (b) Asking the employer to provide a reason for the employee's  
12 wages or lack of employment opportunities; or

13           (c) Aiding or encouraging an employee to exercise his or her  
14 rights under this section.

15           (3) An employer may prohibit an employee who has access to  
16 compensation information of other employees or applicants as part of  
17 such employee's essential job functions from disclosing the wages of  
18 the other employees or applicants to individuals who do not otherwise  
19 have access to such information, unless the disclosure is in response  
20 to a complaint or charge, in furtherance of an investigation, or  
21 consistent with the employer's legal duty to provide the information  
22 and the disclosure is part of the employee's essential job functions.  
23 An employee described in this subsection otherwise has the  
24 protections of this section, including to disclose the employee's  
25 wages without retaliation.

26           (4) Nothing in this section requires an employee to disclose the  
27 employee's compensation.

28        NEW SECTION.    **Sec. 6.**    An employer may not discharge or otherwise  
29 discriminate against an employee because the employee has filed any  
30 complaint, or instituted or caused to be instituted any proceeding  
31 under this chapter, or testified or is about to testify in any such  
32 proceeding, or because of the exercise by such employee on behalf of  
33 himself or herself or others of any right afforded by this chapter.

34        NEW SECTION.    **Sec. 7.**    (1) Upon complaint by an employee, the  
35 director must investigate to determine if there has been compliance  
36 with RCW 49.12.175 (as recodified by this act), sections 4 through 6  
37 of this act, and the rules adopted under this chapter. The director  
38 may also initiate an investigation on behalf of one or more employees

1 for a violation of RCW 49.12.175 (as recodified by this act),  
2 sections 4 through 6 of this act, and the rules adopted under this  
3 chapter. The director may require the testimony of witnesses and  
4 production of documents as part of an investigation.

5 (2) If the director determines that a violation occurred, the  
6 director may order the employer to pay to the complainant actual  
7 damages; statutory damages equal to the actual damages or five  
8 thousand dollars, whichever is greater; and interest of one percent  
9 per month on all compensation owed. The director may also order  
10 payment to the department of a civil penalty of not more than two  
11 hundred dollars for a first violation and not more than one thousand  
12 dollars for a repeat violation, payment to the department of the  
13 costs of investigation and enforcement, and any other appropriate  
14 relief. For purposes of a civil penalty for violation of RCW  
15 49.12.175 (as recodified by this act) and sections 4 and 6 of this  
16 act, the violation as to each affected employee constitutes a  
17 separate violation.

18 (3) An appeal from the director's determination may be taken in  
19 accordance with chapter 34.05 RCW. An employee who prevails is  
20 entitled to costs and reasonable attorneys' fees.

21 (4) The department must deposit civil penalties paid under this  
22 section in the supplemental pension fund established under RCW  
23 51.44.033.

24 (5) Any wages and interest owed must be calculated from the first  
25 date wages were owed to the employee.

26 NEW SECTION. **Sec. 8.** An employee may bring a civil action  
27 against an employer for violation of RCW 49.12.175 (as recodified by  
28 this act) and sections 4 through 6 of this act for actual damages;  
29 statutory damages equal to the actual damages or five thousand  
30 dollars, whichever is greater; interest of one percent per month on  
31 all compensation owed; and costs and reasonable attorneys' fees. The  
32 court may also order reinstatement and injunctive relief. Any wages  
33 and interest owed must be calculated from the first date wages were  
34 owed to the employee.

35 NEW SECTION. **Sec. 9.** The department shall include notice of the  
36 provisions of this chapter in the next reprinting of employment  
37 posters.

1        NEW SECTION.    **Sec. 10.**    The department may adopt rules to  
2 implement sections 1, 2, and 4 through 7 of this act and RCW  
3 49.12.175 (as recodified by this act).

4        NEW SECTION.    **Sec. 11.**    RCW 49.12.175 is recodified as a section  
5 in chapter 49.--- RCW (the new chapter created in section 12 of this  
6 act).

7        NEW SECTION.    **Sec. 12.**    Sections 1, 2, and 4 through 10 of this  
8 act constitute a new chapter in Title 49 RCW.

9        NEW SECTION.    **Sec. 13.**    If specific funding for the purposes of  
10 this act, referencing this act by bill or chapter number, is not  
11 provided by June 30, 2017, in the omnibus appropriations act, this  
12 act is null and void.

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