

HOUSE BILL REPORT

ESHB 1696

As Passed Legislature

Title: An act relating to wage and salary information.

Brief Description: Concerning wage and salary information.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Dolan, Senn, Davis, Macri, Robinson, Jinkins, Kilduff, Wylie, Frame, Appleton, Ortiz-Self, Stanford, Goodman, Chapman, Peterson, Doglio, Pollet, Leavitt, Valdez and Gregerson).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/7/19, 2/12/19 [DP];

Appropriations: 2/26/19, 2/28/19 [DPS].

Floor Activity:

Passed House: 3/9/19, 56-40.

Senate Amended.

Passed Senate: 4/12/19, 37-10.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/24/19, 28-20.

House Concurred.

Passed House: 4/25/19, 57-40.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Prohibits an employer from seeking the wage or salary history of an applicant or requiring that the wage or salary history meet certain criteria, with some exceptions.
- Requires an employer with 15 or more employees to provide to an applicant the minimum wage or salary for the position upon request after the employment offer to the applicant.
- Requires an employer with 15 or more employees to provide, upon request of an employee offered a transfer or promotion, the wage scale or salary range for the new position.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Hoff.

Staff: Jenny Aronson (786-7290) and Joan Elgee (786-7106).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Rude, Assistant Ranking Minority Member.

Staff: Jessica Van Horne (786-7288).

Background:

Current law allows an employer to request an applicant's wage or salary history. The wage scales or salary ranges of public employees are generally made public; however private employers are not required to make wage or salary information public or provide the information to applicants or current employees.

The equal pay and opportunities law prohibits discrimination based on gender in providing compensation between similarly employed employees. An individual's previous wage or salary history is not a defense. An aggrieved employee may file a complaint with the Department of Labor and Industries (Department). If the Director of the Department determines a violation occurred, the Director must attempt to resolve the violation by conference and conciliation. If the issue is not resolved, the Director may issue a citation to the employer. A civil cause of action is also available but the filing of a civil action terminates the processing of an administrative complaint.

The Director or the court may order actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; and interest. Costs and reasonable attorneys' fees are available on appeal from the Director's determination and in a civil action. The Director may also impose a civil penalty of not more than \$200 for a first violation and the greater of \$1,000 or 10 percent of damages for a repeat violation, payment for the cost of the

Department's investigation and enforcement, and any other appropriate relief. The court may also order reinstatement and injunctive relief.

Summary of Engrossed Substitute Bill:

An employer may not seek the wage or salary history of an applicant or require that the applicant's prior wage or salary history meet certain criteria, with some exceptions. A prospective employer may confirm an applicant's wage or salary history if the applicant has voluntarily disclosed the applicant's wage or salary history, or after an offer of employment with compensation has been negotiated and made to the applicant.

Employers with 15 or more employees must follow certain requirements with respect to providing wage and salary information. An employer must provide to an applicant the minimum wage or salary for the position upon request after the employer initially offers the position to the applicant. Upon request of an employee offered an internal transfer or promotion, an employer must provide the wage scale or salary range for the new position. If a wage scale or salary range does not exist, the employer must provide the minimum wage or salary expectation set by the employer.

The remedies in the equal pay and opportunities law apply to the new wage and salary provisions.

The equal pay and opportunities law is named the Equal Pay and Opportunities Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) Washington women have experienced wage discrimination for decades and the gap is even wider for women of color. The use of salary history in the hiring process is a seemingly neutral practice that perpetuates inequality between genders and races. The practice assumes that salaries were fairly established at prior jobs, but data shows that they are not.

This bill builds upon last year's Equal Pay Opportunity Act. Many women in Washington have personal stories about how their salary histories were used to justify paying them less than their male counterparts for comparable work. Washington would follow many states, local governments, and private companies in ending the use of applicants' prior salary histories in the hiring process. This bill can help us get closer to equal pay for equal work.

(Opposed) The concern with the bill is publishing salary ranges. For industries such as law firms and the technology sector, potential recruits' knowledge of salary ranges may create a competitive disadvantage. The provision allowing for use of salary history when volunteered

is helpful. The penalty and attorney's fees provisions are problematic. The gender pay gap is real, and business organizations welcome the opportunity to find workable ways to improve pay equity.

Staff Summary of Public Testimony (Appropriations):

(In support) Common employer practices of asking for an applicant's salary history perpetuate race and gender-based inequalities. These questions may appear neutral but are not neutral in practice. Negotiating one's salary can backfire, especially for women. This is true across industries. These inequalities can also compound over time when bonuses, promotions, and pension contributions are based on a percentage of pay. Businesses have information about salary ranges for different positions, but job seekers do not. Providing job seekers with salary information can help level the playing field.

(Opposed) The opposition to this bill is limited to the requirement that pay ranges are posted, the penalty structure, and the funding source. Employers should not ask about salary history. Removing the pay range publication requirement may decrease the costs of the bill by limiting potential confusion to employers and workers. This bill would divert Workers Compensation Trust Fund dollars away from paying for benefits for injured workers. While the enforcement is within the Department's Wage and Hour Program, the penalty structure does not match those provided under the Wage Payment Act or the Equal Pay Opportunity Act. There is also double jeopardy for employers, as an employee may file an administrative complaint and go to court for the same alleged violation. There is support for the current Senate version of the bill, which provides for a more streamlined process.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Dolan, prime sponsor; Andrew Kashyap, Legal Voice; Marilyn Watkins, Economic Opportunity Institute; and Maggie Humphries, Mom's Rising.

(Opposed) Bob Battles, Association of Washington Business.

Persons Testifying (Appropriations): (In support) Marilyn Watkins, Economic Opportunity Institute.

(Opposed) Bob Battles, Association of Washington Business; and Patrick Connor, National Federation of Independent Businesses.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.