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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)

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

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

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

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

The legislature finds that in order to establish equality among workers, employees in comparable jobs must be compensated as equals. The legislature finds that gaps in employee wages is a form of gender discrimination. Policies that encourage retaliation or discipline towards workers who discuss or inquire about compensation prevent workers from moving forward.

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

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

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

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

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

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

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

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

(i) A seniority system;

(ii) A merit system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  (1) Upon complaint by an employee, the director must investigate to determine if there has been compliance with RCW 49.12.175 (as recodified by this act), sections 4 through 6 of this act, and the rules adopted under this chapter. The director may also initiate an investigation on behalf of one or more employees for a violation of RCW 49.12.175 (as recodified by this act), sections 4 through 6 of this act, and the rules adopted under this chapter. The director may require the testimony of witnesses and production of documents as part of an investigation.

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

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

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

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

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

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

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

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

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

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

**--- END ---**