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**SENATE BILL 5140**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Cleveland, Keiser, Frockt, Ranker, Conway, Nelson, Takko, Darneille, Hunt, Palumbo, Chase, Saldaña, Liias, Rolfes, McCoy, Kuderer, Billig, Wellman, Mullet, Carlyle, Hasegawa, and Pedersen

AN ACT Relating to enacting the equal pay opportunity act by amending and enhancing enforcement of the equal pay act and protecting worker communications about wages and employment opportunities; amending RCW 49.12.175; recodifying RCW 49.12.175; and adding a new chapter to Title 49 RCW.

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

NEW SECTION. **Sec.**  INTENT. The legislature finds that despite existing equal pay laws, there continues to be an unfair gap and inequality in wages among workers in Washington, especially women. Women working full-time in Washington earn 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.

According to census bureau data, forty percent of households 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, men and women in the same job 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 prevents 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.**  DEFINITIONS. 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:

EQUAL PAY OPPORTUNITY.

(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.

(2)(a) If any ((~~female~~)) employee ((~~shall~~)) receives less compensation because of being discriminated against on account of ((~~her sex, and~~)) gender in violation of this section, ((~~she shall be~~)) or if any employee receives less favorable employment opportunities because of being discriminated against on account of gender, that employee is entitled to recover in a civil action the full amount of compensation that ((~~she~~)) the employee would have received had ((~~she~~)) the employee not been discriminated against. An employee is entitled to recover any actual damages; statutory damages of twice 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. In addition, the court may order injunctive relief. In such action, however, the employer shall be credited with any compensation which has been paid to ((~~her~~)) the employee upon account.

(b) A differential in ((~~wages between employees~~)) compensation or employment opportunities based in good faith on a bona fide job-related factor or factors ((~~other than sex shall~~)), including education, training, or experience, that is consistent with business necessity and is not based on or derived from a sex-based differential, does not constitute discrimination within the meaning of ((~~RCW 49.12.010 through 49.12.180~~)) this section.

(3) For purposes of this section, "less favorable employment opportunities" means assigning or directing the employee into a less favorable career track or position based on gender. Factors to be considered include, but are not limited to, assigning work less likely to lead to promotion or future opportunities, placement in positions with lower pay or a lower pay scale, or placement in positions with fewer benefits, including less available hours, flexibility, and autonomy.

NEW SECTION. **Sec.**  WORKPLACE PRACTICES. (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 reasons for a lack of employment advancement available to the employee; or

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

(3) An employer may prohibit a human resources manager from disclosing the wages of other employees unless the disclosure is otherwise required by law.

NEW SECTION. **Sec.**  NO RETALIATION. 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.**  ADMINISTRATIVE ENFORCEMENT. (1) Upon complaint by an employee, the director may investigate to determine if there has been compliance with RCW 49.12.175 (as recodified by this act), sections 4 and 5 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 and 5 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 has good cause to believe the employer has a pattern of complaints or violations of RCW 49.12.175 (as recodified by this act), the director may require the provision of data to the department, including data identifying the sex, race, compensation, and job classifications of employees. An employer who fails to provide the data required under this subsection within a reasonable time period may not use such data in any appeal to challenge the correctness of any determination by the department following an investigation of a pattern of complaints or violations.

(3) If the director determines that a violation occurred, the director may order the employer to pay to the complainant actual damages; statutory damages of twice 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, and payment to the department of the costs of investigation and enforcement, and may order any other appropriate relief.

(4) 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.

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

NEW SECTION. **Sec.**  CAUSE OF ACTION. An employee may bring a civil action against an employer for violation of section 4 or 5 of this act for actual damages; statutory damages of twice 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.

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

NEW SECTION. **Sec.**  RULE MAKING. The department may adopt rules to implement sections 1 through 6 of this act.

NEW SECTION. **Sec.**  SHORT TITLE. This chapter shall be known and cited as the "equal pay opportunity act."

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

(2) RCW 49.12.175 is recodified as a section in chapter 49.--- RCW (the new chapter created in this section).

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