

# SENATE BILL REPORT

## SB 5344

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As of February 7, 2017

**Title:** An act relating to enhancing enforcement of the equal pay act.

**Brief Description:** Enhancing enforcement of the equal pay act.

**Sponsors:** Senators Fain, Walsh, Baumgartner, Rivers and Angel.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 2/01/17.

**Brief Summary of Bill**

- Prohibits the payment of wages at a rate less than is paid to employees in the same establishment of the opposite sex for equal work.
- Specifies authorized differentials in wages, including bona fide job-related factors.
- Prohibits an employer from banning certain workplace practices and authorizes other practices.
- Grants the employees certain rights to bring civil action for equal pay and workplace violations.

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### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Staff:** Richard Rodger (786-7461)

**Background:** The Industrial Welfare Act contains a number of wage and wage-related provisions. One provision, the Equal Pay Act (EPA), provides that an employer who discriminates in the payment of wages as between sexes or who pays any female a lesser wage than males similarly employed is guilty of a misdemeanor. The EPA further provides that if a female receives less compensation because of sex discrimination, she may sue and recover the difference in compensation she should have received. It is a defense that the difference in wages is based in good faith on a factor or factors other than sex.

The Washington Law Against Discrimination, administered by the Human Rights Commission (HRC), also makes it an unfair employment practice to discriminate in

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compensation because of sex. Under a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC), complaints alleging a violation of the EPA filed with HRC are investigated by the EEOC.

The National Labor Relations Act protects the right of some employees to discuss the terms and conditions of employment.

**Summary of Bill:** Equal Pay Provisions. The payment of wages at a rate less than is paid to employees in the same establishment of the opposite sex for equal work is prohibited. Equal wages for equal work which requires equal skill, effort, and responsibility, performed under similar working conditions. A salary differential may be based on seniority systems, merit systems, measures based on quantity or quality of production, or bona fide job-related factors other than sex. The bona fide factors include items such as education, training, performance, experience, or collective bargaining agreements. The bona fide factors must be otherwise permitted by law and be reasonably related to the work in question.

The phrase "same establishment" refers to work for the same employer at workplaces located in the same geographical region, no larger than a county, taking into account population distribution, economic activity, and the presence of municipalities.

An employee is authorized to file a civil action within two years of the cause of action. Damages may include the balance of wages due, statutory damages equal to actual damages, interest, costs, and reasonable attorneys' fees.

The provision that made the equal pay violations a misdemeanor offense is stricken.

Workplace Practices. An employer may not: (1) prohibit an employee from inquiring about, discussing, or disclosing the compensation of the employee or other employees; or (2) prohibit an employee from aiding or encouraging another employee to exercise their rights.

An employer may prohibit: (1) an employee from disclosing compensation of another employee without their consent; or (2) disclosures by an employee who has access to wages of other employees, as part of their essential job functions, to any employees who do not have access to such information.

Employers may have a written policy regarding reasonable limitations of time, place, and manner of inquiries, discussions, and disclosures of wages that is consistent with other state and federal laws. Failure to abide by written policies is an affirmative defense to claims made against the employer. An employee who has been discharged, discriminated, or retaliated against for workplace practices may file a civil action within one year to seek reinstatement and damages. Damages may include lost wages and benefits, statutory damages equal to actual damages, interest, costs, and reasonable attorneys' fees.

No employee who initiates or has previously initiated proceedings with the National Labor Relations Board related to the conduct alleged to be a violation may maintain or recover any relief under a civil action for unlawful discharge, discrimination, or retaliation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: There is less than a 1 percent differential in wages for the technology industry. This bill holds employers accountable and provides clear, enforceable standards. Employers need the clarity provided by this bill; it has good enforcement provisions and avoids creating double jeopardy situations for employers. The requirement of equal pay at the same establishments provides for more equitable enforcement for employers located in multiple cities and counties. The bill provides that employers may adopt policies that provide for opportunities for employees to discuss their wages at appropriate times. These provisions strike a nice balance between the interests and does not micromanage the employers.

CON: The bill makes it more difficult for employees to address the causes of discrimination and limits their access to justice. The bill needs to include an administrative enforcement mechanism, instead of requiring the employees to litigate these issues. This bill moves the state backwards in terms of enforceable equal pay provisions. Women and women of color are hurt the most by the disparity in wages.

**Persons Testifying:** PRO: Michael Schutzler, Washington Technology Industry Assn.; Carolyn Logue, Washington Retail Association; Holli Johnson, Washington Food Industry Association; Bob Battles, AWB.

CON: Janet Chung, Legal Voice; Marilyn Watkins, citizen; Maggie Humphreys, citizen; Lynn Dodson, WA State Labor Council.

**Persons Signed In To Testify But Not Testifying:** No one.