

HOUSE BILL REPORT

ESHB 1696

As Amended by the Senate

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.

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 to provide the wage scale or salary range for the job title to an applicant upon request and to an employee upon hire and upon receipt of a new job title or promotion.

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).

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 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:

It is legal under current law for 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 provide wage scales or salary ranges to applicants for employment.

The Equal Pay Opportunity Act (Act) prohibits an employer from discriminating based on gender in providing compensation between similarly employed employees. The Act further provides that if an employee receives less compensation on the basis of gender, the employee may sue and recover the difference of the compensation he or she should have received. An individual's previous wage or salary history is not a defense.

In a recent Ninth Circuit Court of Appeals (Court) case, the Court held that prior salary may not be considered in setting a person's pay under the federal Equal Pay Act.

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.

An employer must provide to the applicant the wage scale or salary range for the job title upon request. An employer must also provide this information to the employee upon hire and upon receipt of a new job title or promotion. These disclosure requirements are satisfied if the wage scale or salary range for a position is available on the employer's website, or a third-party website used by employees and employers with employer-provided salary information.

An employee may bring a civil action against an employer for a violation of the provisions. Remedies available are: actual damages; statutory damages; interest; and costs and

reasonable attorney's fees. Any wages and interest owed must be calculated from the first date wages were owed. The court may also order reinstatement and injunctive relief.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

1. amends and adds provisions to the equal pay and opportunities chapter, RCW 49.58, rather than the Industrial Welfare Act, RCW 49.12. Names the chapter the Equal Pay and Opportunities Act;
2. makes changes to the requirements to provide wage and salary information:
 - a. provides that the requirements apply to employers with 15 or more employees;
 - b. provides that with respect to applicants, the employer must provide information upon request, and after the employer has initially offered the applicant the position. Specifies that the information is the minimum wage or salary rather than the wage scale or salary range;
 - c. provides that with respect to employees, the employer must provide the wage scale and salary range upon request of an employee offered an internal transfer to a new position or promotion, rather than upon hire and upon receipt of a new job title or promotion (without the requirement of a request);
 - d. adds that if no wage scale or salary range exists, the employer must disclose the minimum wage or salary expectation set by the employer; and
 - e. removes the provision that the requirements are satisfied if the wage scale or salary range is available on a website; and
3. provides the administrative remedy under the equal pay and opportunities chapter, which allows the Director of the Department of Labor and Industries to order remedies substantially the same as those allowed under the cause of action, and authorizes civil penalties. Any wages and interest must be calculated from the first date wages were owed.

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.