

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1905

68th Legislature
2024 Regular Session

Passed by the House February 8, 2024
Yeas 63 Nays 34

**Speaker of the House of
Representatives**

Passed by the Senate February 27,
2024
Yeas 36 Nays 13

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1905** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1905

Passed Legislature - 2024 Regular Session

State of Washington 68th Legislature 2024 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Mena, Senn, Berry, Cortes, Morgan, Ortiz-Self, Ramel, Ramos, Bateman, Reed, Ormsby, Callan, Kloba, Macri, Street, Gregerson, Doglio, Orwall, Bergquist, Goodman, Reeves, Lekanoff, Hackney, Fosse, Pollet, Davis, and Simmons)

READ FIRST TIME 01/23/24.

1 AN ACT Relating to including protected classes in the Washington
2 equal pay and opportunities act; amending RCW 49.58.005, 49.58.010,
3 49.58.020, and 49.58.030; adding a new section to chapter 49.58 RCW;
4 and providing an effective date.

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

6 **Sec. 1.** RCW 49.58.005 and 2019 c 345 s 1 are each amended to
7 read as follows:

8 (1) The legislature finds that despite existing equal pay laws,
9 there continues to be a gap in wages and advancement opportunities
10 among workers in Washington, especially women and workers in other
11 protected classes. Income disparities limit the ability of ((women))
12 these workers to provide for their families, leading to higher rates
13 of poverty among women and children and workers in other protected
14 classes. The legislature finds that in order to promote fairness
15 among workers, employees must be compensated equitably. Further,
16 policies that encourage retaliation or discipline towards workers who
17 discuss or inquire about compensation prevent workers from moving
18 forward.

19 (2) The legislature intends to update the existing Washington
20 state equal pay act, not modified since 1943, to address income

1 disparities, employer discrimination, and retaliation practices, and
2 to reflect the equal status of all workers in Washington state.

3 (3) The legislature finds that:

4 (a) The long-held business practice of inquiring about salary
5 history has contributed to persistent earning inequalities;

6 (b) Historically, women have been offered lower initial pay than
7 men for the same jobs even where their levels of education and
8 experience are the same or comparable; and

9 (c) Lower starting salaries translate into lower pay, less family
10 income, and more children and families in poverty.

11 (4) The legislature therefore intends to follow multiple other
12 states and take the additional step towards gender equality by
13 prohibiting an employer from seeking the wage or salary history of an
14 applicant for employment in certain circumstances. Further, the
15 legislature intends to require an employer to provide wage and salary
16 information to applicants and employees.

17 **Sec. 2.** RCW 49.58.010 and 2018 c 116 s 2 are each amended to
18 read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

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

24 (2) "Department" means the department of labor and industries.

25 (3) "Director" means the director of the department of labor and
26 industries, or the director's designated representative.

27 (4) "Employee" means an employee who is employed in the business
28 of the employee's employer whether by way of manual labor or
29 otherwise.

30 (5) "Employer" means any person, firm, corporation, partnership,
31 business trust, legal representative, or other business entity which
32 engages in any business, industry, profession, or activity in this
33 state and employs one or more employees, and includes the state, any
34 state institution, state agency, political subdivisions of the state,
35 and any municipal corporation or quasi-municipal corporation.

36 (6) "Protected class" means a person's age, sex, marital status,
37 sexual orientation, race, creed, color, national origin, citizenship
38 or immigration status, honorably discharged veteran or military
39 status, or the presence of any sensory, mental, or physical

1 disability or the use of a trained dog guide or service animal by a
2 person with a disability, as those terms are defined in RCW
3 49.60.040.

4 **Sec. 3.** RCW 49.58.020 and 2018 c 116 s 3 are each amended to
5 read as follows:

6 (1) Any employer in this state who discriminates in any way in
7 providing compensation based on a person's gender or membership in a
8 protected class between similarly employed employees of the employer
9 is guilty of a misdemeanor. If any employee receives less
10 compensation because of discrimination on account of the person's
11 gender or membership in a protected class in violation of this
12 section, that employee is entitled to the remedies in RCW 49.58.060
13 and 49.58.070. In such action, however, the employer shall be
14 credited with any compensation which has been paid to the employee
15 upon account.

16 (2) For purposes of this section, employees are similarly
17 employed if the individuals work for the same employer, the
18 performance of the job requires similar skill, effort, and
19 responsibility, and the jobs are performed under similar working
20 conditions. Job titles alone are not determinative of whether
21 employees are similarly employed.

22 (3) (a) Discrimination within the meaning of this section does not
23 include a differential in compensation based in good faith on a bona
24 fide job-related factor or factors that:

25 (i) Are consistent with business necessity;

26 (ii) Are not based on or derived from a gender-based differential
27 and are not based on or derived from the employee being a member of a
28 protected class; and

29 (iii) Account for the entire differential. More than one factor
30 may account for the differential.

31 (b) Such bona fide factors include, but are not limited to:

32 (i) Education, training, or experience;

33 (ii) A seniority system;

34 (iii) A merit system;

35 (iv) A system that measures earnings by quantity or quality of
36 production; or

37 (v) A bona fide regional difference in compensation levels.

1 (c) A differential in compensation based in good faith on a local
2 government ordinance providing for a minimum wage different from
3 state law does not constitute discrimination under this section.

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

6 (e) The employer carries the burden of proof on these defenses.

7 (4) A person may file a complaint or bring an action under this
8 chapter asserting discrimination based on the person's membership in
9 more than one protected class.

10 **Sec. 4.** RCW 49.58.030 and 2018 c 116 s 4 are each amended to
11 read as follows:

12 (1) The legislature finds that equality of opportunity for
13 advancement is key to reducing income disparities based on gender and
14 memberships in protected classes. The legislature further finds that
15 using gender or membership in a protected class as a factor in
16 advancement contributes to pay inequity.

17 (2) An employer may not, on the basis of a person's gender or
18 other membership in a protected class, limit or deprive an employee
19 of career advancement opportunities that would otherwise be
20 available.

21 (3) A differential in career advancement based on a bona fide
22 job-related factor or factors that meet the criteria in RCW
23 49.58.020(3)(a) (i) through (iii) does not constitute discrimination
24 within the meaning of this section. Such bona fide factors include,
25 but are not limited to, the factors specified in RCW 49.58.020(3)(b)
26 (i) through (iv).

27 (4)(a) If it is determined that an employer committed a pattern
28 of violations of this section as to an employee or committed a
29 violation of this section through application of a formal or informal
30 employer policy or practice, the employee is entitled to the remedies
31 in this section and in RCW 49.58.070.

32 (b) Upon complaint by an employee, the director must investigate
33 to determine if there has been compliance with this section and the
34 rules adopted to implement this section. The director, upon
35 complaint, may also initiate an investigation on behalf of one or
36 more employees for a violation of this section and the rules adopted
37 to implement this section. The director may require the testimony of
38 witnesses and production of documents as part of an investigation.

1 (c) If the director determines that a violation occurred, the
2 director shall attempt to resolve the violation by conference and
3 conciliation.

4 (d) If no agreement is reached to resolve the violation and the
5 director determines that the employer committed a pattern of
6 violations of this section as to an employee or committed a violation
7 of this section through application of a formal or informal employer
8 policy or practice, the director may issue a citation and notice of
9 assessment and order:

10 (i) The employer to pay to the employee actual damages, statutory
11 damages equal to the actual damages or (~~five thousand dollars~~)
12 \$5,000, whichever is greater, and interest of one percent per month
13 on all compensation owed;

14 (ii) The employer to pay to the department the costs of
15 investigation and enforcement; and

16 (iii) Any other appropriate relief.

17 (e) In addition to the citation and notice of assessment, if the
18 director determines that the employer committed a pattern of
19 violations of this section as to an employee or committed a violation
20 of this section through application of a formal or informal employer
21 policy or practice, the director may order payment to the department
22 of a civil penalty. The violation as to each affected employee
23 constitutes a separate violation.

24 (i) For a first violation, the civil penalty may not exceed
25 (~~five hundred dollars~~) \$500.

26 (ii) For a repeat violation, the civil penalty may not exceed
27 (~~one thousand dollars~~) \$1,000 or (~~ten~~) 10 percent of the damages,
28 whichever is greater.

29 (f) RCW 49.58.060 (3), (4), and (5) applies to this section.

30 (5) Subject to subsection (4)(a) of this section, a person may
31 file a complaint or bring an action under this chapter asserting
32 discrimination based on the person's membership in more than one
33 protected class.

34 NEW SECTION. Sec. 5. A new section is added to chapter 49.58
35 RCW to read as follows:

36 The department must develop educational materials and conduct
37 outreach to inform individuals and businesses of the new provisions
38 related to discrimination based on membership in a protected class.

1 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2025.

--- **END** ---