

2SHB 1506 - S AMD 832

By Senator Nelson

ADOPTED 03/01/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 NEW SECTION. **Sec. 1.** The legislature finds that despite  
4 existing equal pay laws, there continues to be a gap in wages and  
5 advancement opportunities among workers in Washington, especially  
6 women. Income disparities limit the ability of women to provide for  
7 their families, leading to higher rates of poverty among women and  
8 children. The legislature finds that in order to promote fairness  
9 among workers, employees must be compensated equitably. Further,  
10 policies that encourage retaliation or discipline towards workers who  
11 discuss or inquire about compensation prevent workers from moving  
12 forward.

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

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires  
19 otherwise.

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

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

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

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

29 (5) "Employer" means any person, firm, corporation, partnership,  
30 business trust, legal representative, or other business entity which  
31 engages in any business, industry, profession, or activity in this

1 state and employs one or more employees, and includes the state, any  
2 state institution, state agency, political subdivisions of the state,  
3 and any municipal corporation or quasi-municipal corporation.

4 **Sec. 3.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to  
5 read as follows:

6 (1) Any employer in this state(~~(, employing both males and~~  
7 ~~females, who shall discriminate in any way in the payment of wages as~~  
8 ~~between sexes or who shall pay any female a less wage, be it time or~~  
9 ~~piece work, or salary, than is being paid to males)) who~~  
10 discriminates in any way in providing compensation based on gender  
11 between similarly employed(~~(, or in any employment formerly performed~~  
12 ~~by males, shall be)) employees of the employer is guilty of a~~  
13 misdemeanor. If any ((female)) employee ((shall)) receives less  
14 compensation because of ((being discriminated against))  
15 discrimination on account of ((her sex, and)) gender in violation of  
16 this section, ((she shall be)) that employee is entitled to ((recover  
17 in a civil action the full amount of compensation that she would have  
18 received had she not been discriminated against)) the remedies in  
19 sections 7 and 8 of this act. In such action, however, the employer  
20 shall be credited with any compensation which has been paid to  
21 ((her)) the employee upon account. ((A differential in wages between  
22 employees based in good faith on a factor or factors other than sex  
23 shall not constitute discrimination within the meaning of RCW  
24 49.12.010 through 49.12.180.))

25 (2) For purposes of this section, employees are similarly  
26 employed if the individuals work for the same employer, the  
27 performance of the job requires similar skill, effort, and  
28 responsibility, and the jobs are performed under similar working  
29 conditions. Job titles alone are not determinative of whether  
30 employees are similarly employed.

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

34 (i) Are consistent with business necessity;

35 (ii) Are not based on or derived from a gender-based  
36 differential; and

37 (iii) Account for the entire differential. More than one factor  
38 may account for the differential.

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

- 1        (i) Education, training, or experience;  
2        (ii) A seniority system;  
3        (iii) A merit system;  
4        (iv) A system that measures earnings by quantity or quality of  
5 production; or  
6        (v) A bona fide regional difference in compensation levels.  
7        (c) A differential in compensation based in good faith on a local  
8 government ordinance providing for a minimum wage different from  
9 state law does not constitute discrimination under this section.  
10       (d) An individual's previous wage or salary history is not a  
11 defense under this section.  
12       (e) The employer carries the burden of proof on these defenses.

13       NEW SECTION.    **Sec. 4.**    (1) The legislature finds that equality of  
14 opportunity for advancement is key to reducing income disparities  
15 based on gender. The legislature further finds that using gender as a  
16 factor in advancement contributes to pay inequity.

17       (2) An employer may not, on the basis of gender, limit or deprive  
18 an employee of career advancement opportunities that would otherwise  
19 be available.

20       (3) A differential in career advancement based on a bona fide  
21 job-related factor or factors that meet the criteria in RCW  
22 49.12.175(3)(a) (i) through (iii) (as recodified by this act) does  
23 not constitute discrimination within the meaning of this section.  
24 Such bona fide factors include, but are not limited to, the factors  
25 specified in RCW 49.12.175(3)(b) (i) through (iv) (as recodified by  
26 this act).

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 section 8 of this act.

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 whichever is greater, and interest of one percent per month on all  
13 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 five  
25 hundred dollars.

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

28 (f) Section 7 (3), (4), and (5) of this act applies to this  
29 section.

30 NEW SECTION. **Sec. 5.** (1) An employer may not:

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

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

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

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

1 (b) Asking the employer to provide a reason for the employee's  
2 wages or lack of opportunity for advancement; or

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

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

16 (4) This section does not require an employee to disclose the  
17 employee's compensation.

18 (5) This section does not permit an employee to violate the  
19 requirements in chapter 49.17 RCW and rules adopted under that  
20 chapter.

21 NEW SECTION. **Sec. 6.** An employer may not retaliate, discharge,  
22 or otherwise discriminate against an employee because the employee  
23 has filed any complaint, or instituted or caused to be instituted any  
24 proceeding under this chapter, or has testified or is about to  
25 testify in any such proceeding, or because of the exercise by such  
26 employee on behalf of himself or herself or others of any right  
27 afforded by this chapter.

28 NEW SECTION. **Sec. 7.** (1) Upon complaint by an employee, the  
29 director must investigate to determine if there has been compliance  
30 with RCW 49.12.175 (as recodified by this act), sections 5 and 6 of  
31 this act, and the rules adopted under this chapter. The director,  
32 upon complaint, may also initiate an investigation on behalf of one  
33 or more employees for a violation of RCW 49.12.175 (as recodified by  
34 this act), sections 5 and 6 of this act, and the rules adopted under  
35 this chapter. The director may require the testimony of witnesses and  
36 production of documents as part of an investigation.

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

4 (a) If no agreement is reached to resolve the violation, the  
5 director may issue a citation and notice of assessment and order the  
6 employer to pay to the complainant actual damages; statutory damages  
7 equal to the actual damages or five thousand dollars, whichever is  
8 greater; interest of one percent per month on all compensation owed;  
9 payment to the department of the costs of investigation and  
10 enforcement; and any other appropriate relief.

11 (b) In addition to the citation and notice of assessment, the  
12 director may order payment to the department of a civil penalty. For  
13 purposes of a civil penalty for violation of RCW 49.12.175 (as  
14 recodified by this act) and section 6 of this act, the violation as  
15 to each affected employee constitutes a separate violation.

16 (i) For a first violation, the civil penalty may not exceed five  
17 hundred dollars.

18 (ii) For a repeat violation, the civil penalty may not exceed one  
19 thousand dollars or ten percent of the damages, whichever is greater.

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

23 (4) The department must deposit civil penalties paid under this  
24 section in the supplemental pension fund established under RCW  
25 51.44.033.

26 (5) Any wages and interest owed must be calculated from ten years  
27 before the complaint.

28 NEW SECTION. **Sec. 8.** (1) Subject to subsection (2) of this  
29 section, an employee may bring a civil action against an employer for  
30 violation of RCW 49.12.175 (as recodified by this act) and sections 4  
31 through 6 of this act for actual damages; statutory damages equal to  
32 the actual damages or five thousand dollars, whichever is greater;  
33 interest of one percent per month on all compensation owed; and costs  
34 and reasonable attorneys' fees. The court may also order  
35 reinstatement and injunctive relief. The employee must bring a civil  
36 action within three years of the date of the alleged violation of  
37 this chapter regardless of whether the employee pursued an  
38 administrative complaint. Recovery of any wages and interest owed

1 must be calculated from ten years prior to the date of filing the  
2 civil action.

3 (2) An employee alleging a violation of section 4 of this act is  
4 entitled to relief only if the court determines that the employer  
5 committed a pattern of violations as to the employee or committed a  
6 violation through application of a formal or informal employer policy  
7 or practice.

8 (3) A city, code city, town, county, or political subdivision may  
9 not enact a charter, ordinance, regulation, rule, or resolution:

10 (a) Creating a gender pay equity program that alters or amends  
11 the requirements of this chapter for any private employer;

12 (b) Providing for local enforcement of the provisions of this  
13 chapter; or

14 (c) Requiring private employers to supplement the requirements or  
15 benefits provided under this chapter.

16 NEW SECTION. **Sec. 9.** A violation of this chapter occurs when a  
17 discriminatory compensation decision or other practice is adopted,  
18 when an individual becomes subject to a discriminatory compensation  
19 decision or other practice, or when an individual is affected by  
20 application of a discriminatory compensation decision or other  
21 practice, including each time wages, benefits, or other compensation  
22 is paid, resulting in whole or in part from such a decision or other  
23 practice.

24 NEW SECTION. **Sec. 10.** The department shall include notice of  
25 the provisions of this chapter in the next reprinting of employment  
26 posters.

27 NEW SECTION. **Sec. 11.** The department may adopt rules to  
28 implement sections 1 and 4 through 7 of this act and RCW 49.12.175  
29 (as recodified by this act).

30 NEW SECTION. **Sec. 12.** RCW 49.12.175 is recodified as a section  
31 in chapter 49.--- RCW (the new chapter created in section 13 of this  
32 act).

33 NEW SECTION. **Sec. 13.** Sections 1, 2, and 4 through 11 of this  
34 act constitute a new chapter in Title 49 RCW."

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**ADOPTED 03/01/2018**

1       On page 1, line 2 of the title, after "equity;" strike the  
2 remainder of the title and insert "amending RCW 49.12.175; adding a  
3 new chapter to Title 49 RCW; recodifying RCW 49.12.175; and  
4 prescribing penalties."

EFFECT: (1) Modifies prohibition on an employer limiting or depriving an employee of career advancement opportunities.

(2) Provides that the statute of limitations is three years, and that the date for the wage recovery calculation is ten years prior to the date commencing wage recovery.

(3) Prohibits local governments from creating a gender pay equity program in conflict with this act for private employers; from local enforcement of this act; and from supplementing the requirements of this act.

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