

FINAL BILL REPORT

2SHB 1506

C 116 L 18
Synopsis as Enacted

Brief Description: Addressing workplace practices to achieve gender pay equity.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Senn, Pellicciotti, Slatter, Macri, Peterson, Chapman, Ortiz-Self, Bergquist, Sawyer, Frame, Gregerson, Farrell, Kilduff, Kagi, Dolan, Clibborn, Pollet, McBride, Stanford, Doglio, Appleton, Robinson, Fitzgibbon, Sells, Goodman, Tharinger, Hudgins, Ormsby, Riccelli, Fey and Pettigrew).

House Committee on Labor & Workplace Standards
House Committee on Appropriations
Senate Committee on Commerce, Labor & Sports
Senate Committee on Labor & Commerce

Background:

Under the state's Equal Pay Act (EPA), an employer who discriminates in the payment of wages as between sexes or who pays any female a less 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 (Commission), also makes it an unfair employment practice to discriminate in compensation because of sex. Discrimination in promotions or other terms and conditions is also prohibited. Under a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC), complaints alleging a violation of the EPA filed with the Commission are investigated by the EEOC.

The National Labor Relations Act protects the right of some employees to discuss the terms and conditions of employment. Employees who believe their rights have been violated may file a complaint with the National Labor Relations Board (NLRB).

Washington is a "state plan" state for purpose of the federal Occupational Safety and Health Administration. As a state plan state, Washington assumes responsibility for occupational

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safety and health under the Washington Industrial Safety and Health Act (WISHA). The Department of Labor and Industries adopts rules and otherwise administers the WISHA.

Summary:

Equal Pay.

The Equal Pay Act is modified in several respects. Employees are "similarly employed" if the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative.

The employer defense is changed to provide that discrimination does not include a differential based in good faith on a bona fide job-related factor or factors that: (1) are consistent with business necessity; (2) are not based on or derived from a gender-based differential; and (3) account for the entire differential. More than one factor may account for the differential.

Bona fide factors include:

- education, training, or experience;
- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production; or
- a regional difference in compensation levels.

A differential based in good faith on a local government minimum wage law is also a defense. An employee's previous wage or salary history is not a defense.

References are changed from "sex" to "gender," "wage" is changed to "compensation," and compensation is defined to include benefits. Language referring to "males" and "females" is deleted.

Career Advancement Opportunities.

An employer may not, on the basis of gender, limit or deprive an employee of career advancement opportunities that would otherwise be available. Employer defenses are the same as for EPA defenses except that the defenses based on regional compensation differences or a minimum wage ordinance do not apply.

Wage Discussions.

An employer may not engage in the following practices:

- require employee nondisclosure of wages as a condition of employment;
- require an employee to sign a document that prevents the employee from disclosing the employee's wages; or
- retaliate against an employee for:
 - inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of another employee;
 - asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement; or
 - aiding or encouraging an employee to exercise the employee's rights.

An employer may prohibit an employee who has access to the compensation of others as part of the employee's essential job functions from disclosing wages of others, with some exceptions. The provisions do not allow an employee to violate the WISHA. An employee is not required to disclose the employee's compensation.

Retaliation.

An employer may not discharge or otherwise discriminate against an employee for filing a complaint or taking other specified actions under the EPA, or the career advancement opportunities or wage discussions provisions.

Enforcement.

An employee may file a complaint with the Department of Labor and Industries (Department), and the Department must investigate complaints. The Director of the Department (Director), upon complaint, may also initiate an investigation. If the Director determines a violation occurred, the Director must attempt to resolve the violation by conference and conciliation. If the issue is not resolved, the Director may issue a citation to the employer. Also, a civil cause of action is available for the career advancement, wage discussion, and retaliation provisions, in addition to the EPA. The statute of limitations for a cause of action is three years. Filing of a civil action terminates the Director's processing of the administrative complaint.

With respect to career advancement opportunity violations, the employee is entitled to administrative and judicial remedies if it is determined that the employer committed a pattern of violations as to an employee or committed a violation through application of a formal or informal employer policy or practice.

A violation occurs when a discriminatory decision or other practice is adopted or an individual becomes subject to or affected by the decision or practice, including each time compensation is paid resulting from the decision or practice. The Director or the court may order actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; and interest. Costs and reasonable attorneys' fees are available on appeal from the Director's determination and in a civil action. Any wages and interest owed must be calculated from four years from the last violation before the administrative complaint or the date of filing the civil action. The Director may also impose a civil penalty of not more than \$200 for a first violation and the greater of \$1,000 or 10 percent of damages for a repeat violation, payment for the cost of the Department's investigation and enforcement, and any other appropriate relief. The court may also order reinstatement and injunctive relief.

Other.

Rule-making by the Department regarding most provisions is authorized.

Votes on Final Passage:

2017 Regular Session

House 61 36

2017 First Special Session

House 61 31

2017 Second Special Session

House 61 33

2018 Regular Session

House 69 28

Senate 37 12 (Senate amended)

House (House refused to concur)

Conference Committee

Senate 36 12

House 70 28

Effective: June 7, 2018