
Labor & Workplace Standards Committee

EHB 1506

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

Sponsors: 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.

Brief Summary of Bill

- Modifies the Equal Pay Act by defining "similarly employed," modifying defenses, and making other changes.
- Prohibits discrimination in providing employment opportunities based on gender.
- Prohibits retaliation for certain workplace discussions about wages and other matters.

Hearing Date: 1/8/18

Staff: Joan Elgee (786-7106).

Background:

The Industrial Welfare Act contains a number of wage and employment 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 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

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

Summary of Bill:

Equal Pay Act.

The EPA is modified in several respects. Employees are "similarly employed" if the performance of the job requires comparable 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 a differential based on the following is not discrimination:

- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production;
- a bona fide job-related factor, including but not limited to education, training, or experience, that is: (1) consistent with business necessity; (2) not based on or derived from a gender-based differential; and (3) accounts for the entire differential; or
- a bona fide regional difference in compensation levels that is: (1) consistent with business necessity; (2) not based on or derived from a gender-based differential; and (5) accounts for the entire differential.

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.

Employment Opportunities.

Discrimination in providing employment opportunities based on gender is prohibited. "Less favorable employment opportunities" means assigning or directing the employee into a less favorable career track, if career tracks are offered, or position; failing to provide information about promotions or advancement in the full range of career tracks offered by the employer; or limiting or depriving an employee of employment opportunities that would otherwise be available but for the employee's gender.

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 his or her 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 a lack of employment opportunities; or
 - aiding or encouraging an employee to exercise their rights.

A 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 or rules. 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 employment 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) may also initiate an investigation. In addition, a private cause of action is available.

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 the first date wages were owed to the employee. The Director may also impose a civil penalty of not more than \$200 for a first violation and \$1,000 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 is authorized.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.