

SENATE BILL REPORT

2SHB 1506

As of February 6, 2018

Title: An act relating to workplace practices to achieve gender pay equity.

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).

Brief History: Passed House: 1/17/18, 69-28.

Committee Activity: Labor & Commerce: 2/07/18.

Brief Summary of Second Substitute Bill

- Modifies the Equal Pay Act to prohibit discrimination in compensation, which includes discretionary and nondiscretionary wages and benefits; describe when employees are similarly employed; and provide a defense where a pay differential is based in good faith on bona fide job-related factors.
- Prohibits discrimination related to career advancement opportunities and certain workplace practices related to nondisclosure of wages.
- Requires investigation by Department of Labor and Industries (L&I).
- Provides for remedies, including damages and civil penalties assessed by L&I, and civil action brought by an employee.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: The Industrial Welfare Act contains a number of wage and wage-related 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 lesser wage than males similarly employed is guilty of a misdemeanor. The EPA further provides

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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 (HRC), also makes it an unfair employment practice to discriminate in compensation because of sex. Under a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC), complaints alleging a violation of the EPA filed with HRC are investigated by the EEOC.

The National Labor Relations Act protects the right of some employees to discuss the terms and conditions of employment.

Summary of Bill: Equal Pay. The statute prohibiting discrimination in the payment of wages is modified in several respects. The term "gender" is used rather than "sex." Instead of "wages," discrimination in providing "compensation" based on gender is prohibited and continues to provide civil and criminal consequences. Compensation includes discretionary and nondiscretionary wages and benefits. The phrase "similarly employed" is described. Employees are similarly employed if they work for the same employer, 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.

A general defense of good faith is removed except where there is a differential in compensation based in good faith on a bona fide job-related factor or factors that: are consistent with business necessity; are not based on or derived from a gender-based differential; and account for the entire differential. The bona fide factors include: education, training, or experience; seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a bona fide regional difference in compensation levels. A differential based in good faith on a local government minimum wage ordinance does not constitute discrimination. An person's previous wage or salary history is not a defense. The employer carries the burden of proof on these defenses.

Advancement Opportunities. An employer may not limit or deprive an employee of career advancement opportunities that would otherwise be available to the employee except for gender, including by failing to: (1) announce or provide access to these opportunities or (2) provide training, on the basis of gender. A differential in career advancement based on a bona fide job-related factors as described above does not constitute discrimination.

Prohibited Workplace Practices. An employer may not:

- require nondisclosure of wages as a condition of employment;
- require an employee to sign a waiver that prevents the employee from disclosing the amount of the employee's wages; or
- discharge or retaliate against an employee for: (1) discussing wages or the wages of any other employee, (2) asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement, or (3) for aiding or encouraging an employee to exercise the employee's rights under the legislation.

An employer may generally prohibit certain employees with access to employee wages from disclosing the wages of the other employees or applicants. An employer may not retaliate, discharge, or discriminate against an employee who has filed any complaint or proceeding, testified in any proceeding, or because of the exercise of any right afforded by the legislation.

L&I Investigation, Assessment, and Civil Penalties. Upon complaint by an employee, L&I must investigate to determine if there has been compliance with the act and rules and may also initiate an investigation on behalf of one or more employees for a violation of this act and rules. The director of L&I (director) must attempt to resolve a violation by conference and conciliation; or if no agreement is reached, the director may issue a citation and notice of assessment and order the employer to pay to the employee actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; interest of one percent per month on all compensation owed; payment to L&I of the investigation and enforcement costs; and any other appropriate relief.

The director may also order payment to L&I of a civil penalty of not more than \$500 for a first violation and not more than \$1,000 or ten percent of the damages, whichever is greater, for a repeat violation. For discriminatory advancement opportunity violations, there must be a director's determination of a pattern of or a violation through application of a formal or informal employer policy or practice for an assessment or civil penalty. For civil penalties related to discriminatory advance opportunity, equal pay, and workplace practices violations, the violation as to each affected employee constitutes a separate violation.

An appeal from the director's determination may be taken in accordance with the Administrative Procedures Act. L&I must deposit civil penalties in the supplemental pension fund. An employee who prevails is entitled to costs and reasonable attorneys' fees. Any wages and interest owed must be calculated from four years before the complaint.

Employee Civil Action. An employee may bring a civil action for violations of this act. The employee may be awarded actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; interest of one percent per month on all compensation owed; and costs and reasonable attorneys' fees. For discriminatory advancement opportunity violations, the remedies only apply if the court determines there was a pattern of violations as to the employee or a violation through application of a formal or informal employer policy or practice. The court may also order reinstatement and injunctive relief. Any wages and interest owed must be calculated from four years before the civil action was instituted.

A violation of this legislation occurs when a discriminatory compensation decision or other practice is adopted, when an individual becomes is subject to or is affected by a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid.

Employment Posters and Rules. L&I must include notice of the provisions of this legislation in the next reprinting of employment posters. The department may adopt certain rules to implement this act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.