

SENATE BILL REPORT

SB 5555

As of January 8, 2018

Title: An act relating to wage and salary information.

Brief Description: Addressing wage and salary information.

Sponsors: Senators Wellman, Kuderer, Saldaña, Cleveland, Hasegawa, Carlyle, McCoy, Nelson, Keiser, Rolfes, Darneille, Chase and Conway.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/09/17.

Labor & Commerce: 1/10/18.

Brief Summary of Bill

- Prohibits an employer from seeking an applicant's wage or salary history or requiring that the wage or salary meet certain criteria; limited exceptions apply.
- Requires employers to provide certain wage scales and salary ranges to employees and applicants upon request.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Susan Jones (786-7404)

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Background: Current law does not address an employer's requests for an applicant's wage or salary history or specification that wage or salary history meet certain criteria. Private employers also generally have no legal obligation to provide applicants or employees with wage scales or salary ranges. Information about state public employer wages and salaries is generally public and available.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: An employer may not seek the wage or salary history of an applicant from the applicant or a current or former employer or require that an applicant's prior wage or salary history meet certain criteria, except to confirm an applicant's wage or salary history:

- if the applicant has voluntarily disclosed the applicant's wage or salary history; or
- after an offer of employment with compensation has been negotiated and made.

An employer, upon request, must provide to an applicant or employee, the wage scale or salary range:

- for an applicant's position; and
- for the employee's job title and for comparable jobs upon hire, and annually and upon request after hire.

Upon complaint by an employee, the Department of Labor & Industries (L&I) must investigate to determine compliance with these laws and the rules adopted by L&I. L&I may also initiate an investigation on behalf of one or more employees for a violation and may require the testimony of witnesses and production of documents. If the Director of L&I (Director) determines that a violation occurred, the Director may order the employer to pay to the complainant actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; and interest of 1 percent per month on all compensation owed. A violation as to each affected employee constitutes a separate violation. Any wages and interest owed must be calculated from the first date wages were owed to the employee. An employee may bring a civil action against an employer. A court may also order reinstatement and injunctive relief.

The Director may also order payment to L&I of a civil penalty of not more than \$200 for a first violation and not more than \$1,000 for a repeat violation, the costs of investigation and enforcement, and any other appropriate relief. L&I must deposit civil penalties in the supplemental pension fund.

Definitions are provided for the term employee and employer. L&I may adopt rules to implement this section.

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.

Staff Summary of Public Testimony (Commerce, Labor & Sports): *Testimony from 2017 Regular Session.* PRO: This is a simple bill that can have a tremendous impact. Research shows women earn less than men. Projections show that it would take 45 years to get equality. Women are not the only marginalized group with unequal pay, including many ethnic groups. By taking pay history out of the equation and focusing on what the job is worth, we can change the unequal outcome. I was a working woman, had a baby, was out of the workforce for ten years and had a number of volunteer positions. My previous pay history was not relevant. We can deal with the fiscal note on a number of different ways.

The practice of asking for salary history of job applicants assumes that salaries were fairly established at prior jobs. The use of a person's prior salary to anchor a new salary ends up allowing employers to preserve historical inequities, which is even more damaging for women taking time off to raise children or care for sick and aging family members. Existing laws already prohibit employers from asking certain questions of job applicants, such as marital status, religion, disability, and in some jurisdictions criminal history because they are just not relevant and open the door to discriminatory hiring. Nothing in this bill prevents a worker from voluntarily offering her prior salary if it could benefit her in salary negotiations. Several jurisdictions have already passed similar laws, including Massachusetts, New York City, and the city of Philadelphia. California prohibits salary history from being the only basis for a pay disparity. This bill would level the playing field by giving salary range information that could help them better negotiate for fair pay. Right now the employers hold all of the cards, including the salary information and market data.

Social scientists have documented that women face more barriers to getting to the final stages of the hiring process than do white men. The salary history question comes after having already endured an especially daunting job search knowing if they said a number even a little too high, they are right back to square one. There's a cognitive bias and when we give out salary numbers, we tend to focus on it without much room for adjustment. There is a bias against women who negotiate firmly while rewarding men for similar behavior. Starting at lower pay compounds over time because raises and bonuses, as well as pension contributions, are typically a percentage of pay. Lower pay also means lower Social Security benefits. Most employers who asked that question probably don't intend to discriminate, but that's the result.

CON: Small business owners almost never have an H.R. person on staff. Oftentimes they're working on hiring after regular hours. Requesting salary information from applicants is one of the few ways to get a good sense of the going rate for a position. We oppose the bill not in its entirety but in one word, "seek." A small amendment, that an employer may not "require" the wage or salary history, would allow small business owners to know the going rate. There are some concerns about whether or not this is a violation of First Amendment rights. It is my understanding is that the Comcast case against the city of Philadelphia is moving forward.

Persons Testifying (Commerce, Labor & Sports): PRO: Senator Lisa Wellman, Prime Sponsor; Pamela Crone, Legal Voice; Marilyn Watkins, Economic Opportunity Institute; Eric Gonzalez, Washington State Labor Council.

CON: Patrick Connor, NFIB/Washington.

Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports): No one.