
**Labor & Workplace Standards
Committee**

HB 1905

Brief Description: Including protected classes in the Washington equal pay and opportunities act.

Sponsors: Representatives Mena, Senn, Berry, Cortes, Morgan, Ortiz-Self, Ramel, Ramos, Bateman, Reed, Ormsby, Callan, Kloba, Macri, Street, Gregerson, Doglio, Orwall, Bergquist, Goodman, Reeves, Lekanoff, Hackney, Fosse, Pollet, Davis and Simmons.

Brief Summary of Bill

- Amends the Equal Pay and Opportunities Act to prohibit an employer from discriminating in compensation and career advancement opportunities against similarly employed employees based on the employee's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

Hearing Date: 1/10/24

Staff: Trudes Tango (786-7384).

Background:

The Equal Pay and Opportunities Act.

Under the Equal Pay and Opportunities Act (EPOA), it is a misdemeanor for an employer in the state to discriminate in compensation against similarly employed employees based on the employee's gender. The EPOA also prohibits employers from discriminating, based on gender,

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in career advancement opportunities against similarly employed employees.

Employees are similarly employed if the individuals 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.

It is not considered discrimination if the differential in compensation is based in good faith on a bona fide job-related factor or factors. Bona fide job-related factors may include, but are not limited to:

- education, training, or experience;
- a 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.

The bona fide job-related factor or factors must:

- be consistent with business necessity;
- not be based on or derived from a gender-based differential; and
- account for the entire differential.

The employee may file a complaint with the Department of Labor and Industries (Department). The Department must investigate the complaint and if it determines a violation has occurred, the Director of the Department must attempt to resolve the issue by conference and conciliation. If no agreement is reached, the Department may issue a citation and notice of assessment and order actual damages, statutory damages equal to the greater of actual damages or \$5,000, interest, costs and fees, and other appropriate relief, including civil penalties.

The employee may bring a civil action against the employer, in which case the employee's administrative complaint is terminated. The employee may be entitled to actual damages, statutory damages equal to the greater of actual damages or \$5,000, interest, and costs and reasonable attorneys' fees. The court may also order reinstatement and injunctive relief. An employee alleging a violation of opportunity for advancement is entitled to relief only if the employer committed a pattern of violations as to the employee or committed a violation through application of a formal or informal employer policy or practice.

The Washington Law Against Discrimination.

The Washington Law Against Discrimination (WLAD) makes it an unfair practice for an employer to discriminate with regard to compensation or other terms or conditions of employment against an employee based on the individual's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability.

The WLAD applies to employers that employ eight or more persons and does not include any

religious or sectarian organization not organized for private profit.

An employee alleging an unfair practice may file a complaint with the Human Rights Commission, which must investigate and attempt to eliminate the unfair practice by conference, conciliation, and persuasion. An employee may also bring a civil cause of action in court to recover actual damages, costs, and reasonable attorneys' fees, and any other appropriate remedy.

Summary of Bill:

The EPOA is amended to include employees who are members of a protected class. Therefore, it is a violation of the EPOA for an employer to discriminate in compensation or career advancement opportunities against similarly employed employees based on the employee's membership in a protected class.

Protected class means a person's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, as those terms are defined under the WLAD.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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