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# A BILL FOR AN ACT

RELATING TO EQUAL PAY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that pay disparity  
2 persists between men and women who do similar work. The  
3 Institute for Women's Policy Research reports that if the pace  
4 of change continues at the same rate as it has since 1960, women  
5 and men will not reach pay parity until 2058.

6           The legislature further finds that action should be taken  
7 to encourage greater gender equality in the workplace. Since  
8 first enacting laws against employment discrimination based on  
9 sex decades ago, it has been the intent of the legislature to  
10 promote gender equality in the workplace. California has taken  
11 the initiative to improve equal pay by enacting the Fair Pay Act  
12 of 2015. Hawaii should follow suit to effect its intentions to  
13 promote gender equality in the work place and close the pay gap  
14 between men and women.

15           Existing Hawaii law generally prohibits an employer from  
16 paying an employee at wage rates less than the rates paid to  
17 employees of the opposite sex in the same establishment for



1 equal work on jobs when the performance requires equal skill,  
2 effort, and responsibility, and the jobs are performed under  
3 similar working conditions.

4 The legislature finds that in 2014, the gender wage gap in  
5 Hawaii stood at 14.2 cents on the dollar. A woman working full-  
6 time and year-round earned an average of 85.8 cents to every  
7 dollar a man earned. This wage gap extends across almost all  
8 occupations reporting in Hawaii. The gap is far worse for women  
9 of color: African American women in Hawaii make only 73.4 cents  
10 for every dollar a white male makes; Latina women make only 61.3  
11 cents for every dollar a white male makes; and Asian American  
12 women make only 73.3 cents for every dollar a white male makes.

13 While Hawaii's gender wage gap is lower than the national  
14 average of 79 cents to the dollar, the persistent disparity in  
15 earnings still has a significant impact on the economic security  
16 and welfare of thousands of working women and their families.  
17 Collectively, women working full-time in Hawaii lose  
18 approximately \$1,673,175,520 each year due to the gender wage  
19 gap. The wage gap contributes to the higher statewide poverty  
20 rate among women, which stands at 11.7 per cent, compared to  
21 approximately seven per cent for men. The poverty rate for



1 female-headed families is extremely high at 26.8 per cent, and  
2 14.7 per cent of Hawaii's children live in poverty.

3 The legislature also finds that pay secrecy undermines  
4 efforts to close the pay gap. A 2010 Institute for Women's  
5 Policy Research/Rockefeller Survey of Economic Security reported  
6 that 23.1 per cent of private sector workers reported that  
7 discussion of wages and salaries was formally prohibited, and an  
8 additional 38.1 per cent reported that such discussion was  
9 discouraged by managers. Pay secrecy inhibits workers from  
10 pursuing claims of pay discrimination because women cannot  
11 challenge wage discrimination that they do not know exists. The  
12 federal government and many states have taken action to end wage  
13 secrecy by prohibiting retaliation against employees who discuss  
14 wages. Hawaii can also take this step by banning wage secrecy  
15 and banning retaliation against employees who disclose or  
16 discuss their wages.

17 The legislature finds that to eliminate the gender wage gap  
18 in Hawaii, the State's equal pay provisions and laws regarding  
19 wage disclosures must be improved. The purpose of this Act is  
20 to encourage equal pay between men and women by:



- 1           (1) Ensuring that employees performing substantially  
2                   similar work are paid equally;
- 3           (2) Changing the requirement of "equal work" to  
4                   "substantially similar work";
- 5           (3) Providing employer affirmative defenses in cases where  
6                   pay differentials are caused by bona fide seniority  
7                   systems, bona fide merit systems, and bona fide  
8                   factors other than sex; provided that these factors do  
9                   not have a discriminatory effect or purpose;
- 10          (4) Eliminating the "same establishment" provision, which  
11                   prevented employees from being able to compare their  
12                   salary to that of a coworker who did the same job in a  
13                   different physical location;
- 14          (5) Prohibiting retaliation or discrimination against  
15                   employees who disclose, discuss, or inquire about  
16                   their own or co-workers' wages for the purpose of  
17                   exercising rights under the law;
- 18          (6) Prohibiting employers from screening job applicants  
19                   based on their wage or salary histories;
- 20          (7) Prohibiting employers from seeking salary histories  
21                   from prospective employees, unless the employer offers



1 employment to the prospective employee and obtains  
2 written authorization; and

3 (8) Requiring employer advertisements to include the  
4 minimum rate of pay and prohibiting the employer from  
5 paying less than the rate advertised.

6 SECTION 2. Section 378-2.3, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[~~§~~378-2.3] Equal pay; sex discrimination. (a) No  
9 employer shall discriminate between employees because of sex, by  
10 paying wages to employees [~~in an establishment~~] at a rate less  
11 than the rate at which the employer pays wages to employees of  
12 the opposite sex [~~in the establishment~~] for [~~equal work on jobs~~  
13 ~~the performance of which requires equal~~] substantially similar  
14 work in terms of skill, effort, and responsibility, [and that  
15 are] performed under similar working conditions[~~—Payment~~  
16 ~~differentials resulting from:~~], except where the employer  
17 demonstrates the wage differential is based upon one of the  
18 following factors:

19 (1) A bona fide seniority system; provided that it is  
20 established by a collective bargaining agreement,  
21 civil service requirement, or formal employer policy



- 1           that treats employees who do substantially similar  
2           work equally;
- 3           (2) A bona fide merit system; provided that it is being  
4           operated and applied in a nondiscriminatory manner,  
5           and that it measures merit objectively and  
6           consistently across positions involving substantially  
7           similar work; or
- 8           ~~[(3) A system that measures earnings by quantity or quality~~  
9           ~~of production;~~
- 10          ~~(4)]~~ (3) A bona fide [occupational qualification; or]  
11          factor other than sex only if:
- 12          (A) It does not have a disparate impact based on sex;  
13          or
- 14          (B) If it does have a disparate impact based on sex,  
15          the employer proves that the factor is job-  
16          related for the position in question and that  
17          there is no alternative business practice that  
18          would serve substantially the same business  
19          purpose with less sex based disparate impact; and
- 20          (C) The factor is not being used to and is not  
21          operating to discriminate based on sex.



1       ~~[(5) A differential based on any other permissible factor~~  
2           ~~other than sex do not violate this section.]~~

3           (b) An employer shall not prohibit an employee from  
4 disclosing the employee's wages, discussing and inquiring about  
5 the wages of other employees, or aiding or encouraging any other  
6 employee to exercise rights under this section.

7           (c) Any employer shall be prohibited, personally or  
8 through an agent, to screen job applicants based on their wage  
9 or salary histories, including by:

10          (1) Requiring that an applicant's prior wages or salary  
11           history satisfy minimum or maximum criteria; or

12          (2) Requesting or requiring as a condition of being  
13           interviewed, or as a condition of continuing to be  
14           considered for an offer of employment, that an  
15           applicant disclose prior wages or salary history.

16          (d) Any employer shall be prohibited from seeking the  
17 salary history of any prospective employee from any current or  
18 former employer; provided that a prospective employee may  
19 provide written authorization to a prospective employer to  
20 confirm prior wages or salary history only after an offer of  
21 employment has been made to the prospective employee.



1       (e) Any employer shall, personally or through an agent,  
2 publish, list, or post, publicly or within the organization; or  
3 publish, list, or post with any employment agency, job-listing  
4 service, or website, an advertisement to recruit candidates for  
5 hire or independent contractors to fill a position within the  
6 organization, including:

- 7       (1) The minimum rate of pay, whether paid by the hour,  
8       shift, day, week, salary, piece, commission, or other;  
9       (2) Overtime; and  
10       (3) Allowances, if any, claimed as part of the minimum  
11       wage, including tip, meal, or lodging allowances.

12       No employer shall pay wages less than what were advertised  
13 for the position.

14       (f) Nothing in this section shall limit any person's right  
15 under any other section of this chapter to be free of  
16 compensation discrimination in employment.

17       (g) As used in this section, "sex" shall include gender."

18       SECTION 2. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20       SECTION 3. This Act shall take effect on July 1, 2016.





**Report Title:**

Pay Equity; Gender Discrimination

**Description:**

Amends the provisions for equal pay and sex discrimination for substantially similar work. Clarifies employer defenses. Prohibits employer actions regarding wage disclosure and applicant wage histories. Requires that employer advertisements include minimum rate of pay. (HB1909 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

