

JAN 22 2016

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:



S.B. NO. 2313

- 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 occupational qualifications;
- 9 (4) Ensuring that any legitimate, non-sex related factor
10 relied upon are applied and operate in a non-
11 discriminatory manner;
- 12 (5) Eliminating the "same establishment" provision, which
13 prevented employees from being able to compare their
14 salary to that of a coworker who did the same job in a
15 different physical location; and
- 16 (6) Prohibiting retaliation or discrimination against
17 employees who disclose, discuss, or inquire about
18 their own or co-workers' wages for the purpose of
19 exercising rights under the law.

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



1 " ~~[+]§378-2.3[+]~~ Equal pay; sex discrimination. (a) No
2 employer shall discriminate between employees because of sex, by
3 paying wages to employees ~~[in an establishment]~~ at a rate less
4 than the rate at which the employer pays wages to employees of
5 the opposite sex ~~[in the establishment]~~ for ~~[equal work on jobs~~
6 ~~the performance of which requires equal]~~ substantially similar
7 work in terms of skill, effort, and responsibility, [and that
8 are] performed under similar working conditions ~~[- Payment~~
9 ~~differentials resulting from:]~~, except where the employer
10 demonstrates the wage differential is based upon one of the
11 following factors:

- 12 (1) A bona fide seniority system; provided that it is
13 established by a collective bargaining agreement,
14 civil service requirement, or formal employer policy
15 that treats employees who do substantially similar
16 work equally;
- 17 (2) A bona fide merit system; provided that it is being
18 operated and applied in a nondiscriminatory manner,
19 and that it measures merit objectively and
20 consistently across positions involving substantially
21 similar work; or



S.B. NO. 2313

Report Title:

Pay Equity; Gender Discrimination

Description:

Amends the provisions for equal pay and sex discrimination for substantially similar work. Clarifies the employer defenses. Prohibits employer actions regarding wage disclosure.

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

