
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. However, in 2014, the gender wage
4 gap in Hawaii stood at 14.2 cents on the dollar. A woman
5 working full-time and year-round earned an average of 85.8 cents
6 to every dollar a man earned. This wage gap extends across
7 almost all occupations reporting in Hawaii. The gap is far
8 worse for women of color: African American women in Hawaii make
9 only 73.4 cents for every dollar a white male makes; Latina
10 women make only 61.3 cents for every dollar a white male makes;
11 and Asian American women make only 73.3 cents for every dollar a
12 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 about 11.7 per cent, compared
21 to approximately seven per cent for men. The poverty rate for



1 female-headed families is extremely high at 26.8 per cent, and
2 approximately 14.4 per cent of Hawaii's children live in
3 poverty.

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

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



- 1 (1) Ensuring that employees performing substantially equal
2 work are paid equally;
- 3 (2) Changing the requirement of "equal work" to
4 "substantially equal work";
- 5 (3) Providing employers affirmative defenses in cases
6 where pay differentials are caused by bona fide
7 seniority systems, bona fide merit systems, and bona
8 fide factors other than sex;
- 9 (4) Ensuring that any legitimate, non-sex related factor
10 relied upon is applied in a non-discriminatory manner;
- 11 (5) Eliminating the "same establishment" provision, which
12 prevents employees from being able to compare their
13 salary to that of a coworker who did the same job in a
14 different physical location;
- 15 (6) Prohibiting retaliation or discrimination against
16 employees who disclose, discuss, or inquire about
17 their own or co-workers' wages for the purpose of
18 exercising rights under the law; and
- 19 (7) Prohibiting prospective employers from requesting or
20 considering a job applicant's prior wage or salary
21 history in the job application process.



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

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

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



- 1 that it measures merit objectively and consistently
2 across positions involving substantially equal work;
- 3 (3) A system that measures earnings by quantity or quality
4 of production;
- 5 ~~[(4) A bona fide occupational qualification; or~~
6 ~~(5)]~~ (4) A bona fide factor other than sex, including
7 education, training, or experience; provided that it
8 is not based on or derived from a sex-based
9 differential [based on any other permissible factor
10 other than sex do not violate this section.] in
11 compensation, is job-related to the position in
12 question, and is consistent with a legitimate business
13 necessity.
- 14 (b) An employer shall not prohibit an employee from
15 disclosing the employee's wages, discussing and inquiring about
16 the wages of other employees, or aiding or encouraging any other
17 employee to exercise rights under this section.
- 18 (c) No prospective employer shall, personally or through
19 an agent, screen job applicants based on wage or salary history,
20 including:



1 (1) Requiring that a job applicant disclose prior wage or
2 salary history to satisfy minimum or maximum wage or
3 salary criteria; or

4 (2) Requesting or requiring as a condition of being
5 interviewed, or as a condition of continuing to be
6 considered for an offer of employment, that a job
7 applicant disclose prior wage or salary history.

8 (d) No prospective employer shall request the wage or
9 salary history of a job applicant from any current or former
10 employer of the job applicant; provided that a job applicant may
11 provide written authorization to a prospective employer to
12 confirm prior wage or salary history after the prospective
13 employer has made an offer of employment to the job applicant."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2091.



Report Title:

Pay Equity; Gender Discrimination; Employment

Description:

Clarifies affirmative defenses that an employer may use in a pay differential case. Prohibits employer actions regarding wage disclosure. Prohibits an employer from discriminating between employees because of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for substantially equal work and under similar working conditions, with certain exceptions. Prohibits prospective employers from requesting or considering a job applicant's wage or salary history as part of the employment application process. (SB2313 HD1)

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