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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  
18 equal work on jobs when the performance requires equal skill,



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

12 While Hawaii's gender wage gap is lower than the national  
13 average of 79 cents to the dollar, the persistent disparity in  
14 earnings still has a significant impact on the economic security  
15 and welfare of thousands of working women and their families.  
16 Collectively, women working full-time in Hawaii lose  
17 approximately \$1,673,175,520 each year due to the gender wage  
18 gap. The wage gap contributes to the higher statewide poverty  
19 rate among women, which stands at about 11.7 per cent, compared  
20 to approximately seven per cent for men. The poverty rate for  
21 female-headed families is extremely high at 26.8 per cent, and



1 approximately 14.4 per cent of Hawaii's children live in  
2 poverty.

3       The legislature additionally finds that pay secrecy  
4 undermines efforts to close the pay gap. A 2010 Institute for  
5 Women's Policy Research/Rockefeller Survey of Economic Security  
6 reported that 23.1 per cent of private sector workers indicates  
7 that discussion of wages and salaries was formally prohibited,  
8 and an additional 38.1 per cent reported that such discussion  
9 was 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 employers affirmative defenses in cases  
6 where pay differentials are caused by bona fide  
7 seniority systems, bona fide merit systems, bona fide  
8 occupational qualifications, and bona fide factors  
9 other than sex;
- 10 (4) Ensuring that any legitimate, non-sex related factor  
11 relied upon is applied in a non-discriminatory manner;
- 12 (5) Eliminating the "same establishment" provision, which  
13 prevents 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 and  
19 that it measures merit objectively and consistently  
20 across positions involving substantially similar work;



1 (3) A system that measures earnings by quantity or quality  
2 of production;

3 (4) A bona fide occupational qualification; ~~[or]~~ provided  
4 that it does not have a disparate impact based on sex  
5 and that the qualification is necessary to the  
6 position; or

7 (5) A bona fide factor other than sex, including  
8 education, training, or experience; provided that it  
9 is not based on or derived from a sex-based  
10 differential ~~[based on any other permissible factor~~  
11 ~~other than sex]~~ in compensation, is job-related to the  
12 position in question, and is consistent with a  
13 legitimate business necessity.

14 ~~[do not violate this section.]~~

15 (b) An employer shall not prohibit an employee from  
16 disclosing the employee's wages, discussing and inquiring about  
17 the wages of other employees, or aiding or encouraging any other  
18 employee to exercise rights under this section."

19 SECTION 3. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect on January 7, 2059.



**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 similar work and under similar working conditions, with certain exceptions. Effective January 7, 2059. (SD1)

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

