
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;
- 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; and



1 (7) Prohibiting prospective employers from requesting or
2 considering a job applicant's prior wage or salary
3 history in the job application process.

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

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

18 (1) A bona fide seniority system; provided that it is
19 established by a collective bargaining agreement,
20 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 and
5 that it measures merit objectively and consistently
6 across positions involving substantially similar work;
- 7 (3) A system that measures earnings by quantity or quality
8 of production;
- 9 (4) A bona fide occupational qualification; ~~[or]~~ provided
10 that it does not have a disparate impact based on sex
11 and that the qualification is necessary to the
12 position; or
- 13 (5) A bona fide factor other than sex, including
14 education, training, or experience; provided that it
15 is not based on or derived from a sex-based
16 differential [based on any other permissible factor
17 other than sex] in compensation, is job-related to the
18 position in question, and is consistent with a
19 legitimate business necessity.
- 20 ~~[do not violate this section.]~~



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

5 (c) No prospective employer shall, personally or through
6 an agent, screen job applicants based on wage or salary history,
7 including:

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

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

15 (d) No prospective employer shall request the wage or
16 salary history of a job applicant from any current or former
17 employer of the job applicant; provided that a job applicant may
18 provide written authorization to a prospective employer to
19 confirm prior wage or salary history after the prospective
20 employer has made an offer of employment to the job applicant."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 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. Prohibits prospective employers from requesting or considering a job applicant's wage or salary history as part of the employment application process. Effective January 7, 2059. (SD2)

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