

Honolulu, Hawaii  
February 17, 2016

RE: H.B. No. 1909  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 1909 entitled:

"A BILL FOR AN ACT RELATING TO EQUAL PAY,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Ensure that employees performing substantially similar work are paid equally;
- (2) Change the requirement of "equal work" to "substantially similar work";
- (3) Provide affirmative defenses for employers in cases where pay differentials are caused by bona fide seniority systems, bona fide merit systems, and bona fide occupational qualifications;
- (4) Ensure that any legitimate, non-sex related factor relied upon are applied and operate in a non-discriminatory manner;
- (5) Eliminate the "same establishment" provision, which prevented employees from being able to compare their salary to that of a coworker who did the same job in a different physical location; and



- (6) Prohibit retaliation or discrimination against employees who disclose, discuss, or inquire about their own or co-workers' wages for the purpose of exercising rights under the law.

The American Association of University Women, the Hawaii State Coalition Against Domestic Violence, YWCA Oahu, the National Association of Social Workers Hawaii Chapter, and two individuals testified in support of this measure. The Chamber of Commerce Hawaii, the Society for Human Resource Management Hawaii Chapter, and the National Federation of Independent Business testified in opposition. The Hawaii Civil Rights Commission, the Hawaii State Commission on the Status of Women, the Hawaii State Democratic Women's Caucus, the Hawaii Women's Coalition, and one individual provided comments.

Your Committee has amended this measure by:

- (1) Repealing the bona fide occupational qualification affirmative defense and instead establishing an affirmative defense for a bona fide factor other than sex under certain circumstances;
- (2) Prohibiting employers from screening job applicants based on their wage or salary histories;
- (3) Prohibiting employers from seeking salary histories from prospective employees, unless the employer offers employment to the prospective employee and obtains written authorization;
- (4) Requiring employer advertisements to include the minimum rate of pay and prohibiting the employer from paying less than the rate advertised;
- (5) Clarifying that the changes do not limit any person's right under existing law to be free from compensation discrimination in employment; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1909, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1909, H.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Labor & Public  
Employment,



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MARK M. NAKASHIMA, Chair



