



**SB2313 SD1**  
**RELATING TO EQUAL PAY**  
Senate Committee on Ways and Means

February 24, 2016

1:15 p.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2313 SD1, which strengthens important civil rights statutes relating to sex discrimination in pay, and includes important pay disclosure protections that allow employees to discuss their wages without reprisal. This bill aligns with OHA's strategic priority of improving the economic self-sufficiency of Native Hawaiians.

This legislation strengthens our civil rights enforcement statutes, and may help to combat systemic discrimination and implicit biases that can be at the root of economic disparities. OHA data shows extreme disparities in income for Native Hawaiians, and particularly for Native Hawaiian women, suggesting that gender and race discrimination in pay may significantly impact the Native Hawaiian community. For example, despite participating in the labor force at higher rates than the statewide population, Native Hawaiians earn substantially less than the state average income.<sup>1</sup> Meanwhile, a greater percentage of Native Hawaiian women have bachelor's degrees or higher educational qualifications compared to Native Hawaiian men,<sup>2</sup> and a greater percentage of employed Native Hawaiian women are in management and other typically higher-paying occupations compared to employed Native Hawaiian men;<sup>3</sup> however, Native Hawaiian women workers' median income is only 85.44% of their Native Hawaiian male counterparts. Notably, Native Hawaiian women workers also earn only 88.95% of the median income of total state female workers and 75.36% of the median income of total state male workers. These disparities are even more pronounced for single mothers, with Native Hawaiian single mothers earning only 60.5% of the median income for Native Hawaiian single fathers, and 76% of the median income for all single mothers in the state.<sup>4</sup>

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<sup>1</sup> See OFFICE OF HAWAIIAN AFFAIRS, INCOME INEQUALITY AND NATIVE HAWAIIAN COMMUNITIES IN THE WAKE OF THE GREAT RECESSION: 2005 TO 2013 (2014) <http://www.oha.org/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>.

<sup>2</sup> 17.9% of Native Hawaiian women have bachelor's degrees compared to 15.0% of Native Hawaiian men. See 2014 American Community Survey, 1 Year Table SO201.

<sup>3</sup> 31.5% of Native Hawaiian women are employed in management, business, science, and arts occupations compared to 18.8% of Native Hawaiian men. See *Id.*

<sup>4</sup> In 2014, Native Hawaiian single mother's median income was \$37,649 or 60.45% of Native Hawaiian single fathers income of \$62,277, and 76% of single mothers' median income statewide of \$49,797. See *Id.*

SB2313 SD1 may help to alleviate the economic disparities resulting from implicit biases and systemic discrimination in the workplace. The specific provisions regarding sex discrimination will provide civil rights enforcement agencies with the ability to more adequately ensure employees are paid equally, regardless of gender. Moreover, the pay disclosure protections may also help to address both sex and racial discrimination, by allowing employees to evaluate their wages in comparison to their peers.

Accordingly, OHA urges the Committee to **PASS** SB2313 SD1. Mahalo nui for the opportunity to testify on this important measure.



# HAWAI‘I CIVIL RIGHTS COMMISSION

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February 24, 2016  
Rm. 211, 1:15 p.m.

To: The Honorable Jill N. Tokuda , Chair  
The Honorable Donovan M. Dela Cruz , Vice-Chair  
Members of the Senate Committee on Ways and Means

From: Linda Hamilton Krieger, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2313, S.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC strongly supports S.B. No. 2313, S.D.1, which amends our state equal pay law, HRS § 378-2.3. The bill would amend the statute by adding a new subsection § 368-2.3(b), to provide that an employer may not prohibit an employee from disclosing wages, or discussing, inquiring, aiding or encouraging any other employee from doing so. This amendment to the statute is a critically important substantive enhancement to our state equal pay law.**

S.D. 1 amends HRS §368-2.3 to clarify and narrowly tailor the exceptions to the statute’s equal pay protections. **The HCRC strongly recommends that the term “bona fide occupational qualification” (BFOQ) be deleted from the proposed paragraph 368-2.3(a)(4), because it is an inappropriate and incorrect use of that term.** “BFOQ” has a specific legal meaning that does not apply in the unequal pay context. An employer can establish a BFOQ which would allow the exclusion of applicants because of their sex, race, etc. A BFOQ is a very narrow exception that allows for discrimination on a protected basis. An often cited example of a BFOQ is the consideration of sex or race in casting for film roles for the purpose of authenticity. Conceptually, there is no place for a BFOQ in an equal pay analysis.

The HCRC previously submitted language, some, but not all, of which was incorporated in SD 1. HCRC suggests that “occupational qualification” be changed to “factor,” to clarify that factors can legitimately be considered by an employer, but that a determination has not yet been made as to whether the factor is accepted pursuant to law.

The HCRC strongly supports this bill, and an end to pay disparity between men and women who do similar work. Equal pay for equal work will benefit families, and children, as well as women employees.

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STATUS  
OF  
WOMEN



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February 23, 2016

To: Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Members of the Senate Committee on Ways and Means

From: Cathy Betts, Executive Director  
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 2313, SD1, Relating to Equal Pay

Thank you for this opportunity to provide testimony in support of SB 2313, which would amend Hawaii's equal pay statute, HRS 378-2.3, thereby strengthening equal pay protection for women and providing further guidance to employers and employees.

Currently, the wage gap for Hawaii's women is at a standstill, with women making roughly 86 cents for every dollar paid to a man for substantially similar work. Throughout the past 30 years, the wage gap has stagnated. At the current rate, the wage gap will not close in Hawaii until 2058.

40% of American families depend on a woman as both the primary caregiver and the primary or sole breadwinner. Families largely depend on women's wages to be economically self sufficient, which makes the stagnated wage gap a real and tangible daily problem for working families everywhere, including Hawaii. Women in Hawaii who are employed full time lose a combined total of more than *1.4 billion dollars* annually due to the wage gap.<sup>i</sup> This wage gap exists regardless of industry, occupational choice or educational level, and it is felt the moment a woman receives her first job, whether out of high school, college, graduate school, etc.<sup>ii iii iv</sup>

Pay inequity is largely linked to poverty. If women's hourly earnings rose to the level of similarly qualified men, poverty rates among working families would be reduced by 50%. This is a real problem with real effects on women and families, and in turn, the economy. Our equal pay statute has not been litigated, so there is very little guidance for employers or employees on what constitutes compensation discrimination, or the remedies an employee may have under the law. By revising the language in HRS 378-2.3, we have an opportunity to hasten the closing of the wage gap, thereby benefiting all women and families in Hawaii.

The Commission concurs with the Hawaii Civil Rights Commission and recommends that the term "bona fide occupational qualification" (BFOQ) be deleted from the proposed paragraph 368-2.3(a)(4), because BFOQ does not have a legal meaning in the unequal pay context. This term can further confuse employers and employees alike and become difficult to enforce.

Further, the Commission recommends additional language to ensure job applicants are not screened or selected based on their wage history or last

salary, which significantly impacts women throughout their work trajectory. Prohibiting potential employers from requesting information regarding prior salaries has been found to be a wage equalizer for male and female employees.

378-2.3

(c) Any employer shall be prohibited, personally or through an agent, to screen job applicants based on their wage or salary histories, including by:

(1) Requiring that an applicant's prior wages or salary history satisfy minimum or maximum criteria; or

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

(d) Any employer shall be prohibited from seeking the salary history of any prospective employee from any current or former employer; provided that a prospective employee may provide written authorization to a prospective employer to confirm prior wages or salary history only after an offer of employment has been made to the prospective employee.

Thank you for allowing the Commission to submit written testimony in support of SB 2313, SD1.

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<sup>i</sup> U.S. Census Bureau. (2015). American Community Survey 1-Year Estimates 2014, Geographies: All States within United States and Puerto Rico, Table B20017: Median Earnings in the Past 12 Months by Sex by Work Experience in the Past 12 Months for the Population 16 Years and Over with Earnings in the Past 12 Months. Available at:  
[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_14\\_1YR\\_B20017&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_B20017&prodType=table)

<sup>ii</sup> U.S. Census Bureau. (2015). American Community Survey 1-Year Estimates 2014, Table S2404: Industry by Sex and Median Earnings in the Past 12 Months for the Full-Time, Year-Round Civilian Employed Population 16 Years and Over. Retrieved 17 September 2015, from  
[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_14\\_1YR\\_S2404&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S2404&prodType=table)

<sup>iii</sup> U.S. Census Bureau. (2015). Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-06: Occupation of Longest Job in 2014--People 15 Years and Over, by Total Money Earnings in 2014, Work Experience in 2014, Race, Hispanic Origin, and Sex. Retrieved 17 September 2015, from  
[http://www.census.gov/hhes/www/cpstables/032015/perinc/pinc06\\_000.htm](http://www.census.gov/hhes/www/cpstables/032015/perinc/pinc06_000.htm)

<sup>iv</sup> U.S. Census Bureau (2015). Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-03. Educational Attainment--People 25 Years Old and Over, by Total Money Earnings in 2014, Work Experience in 2014, Age, Race, Hispanic Origin, and Sex. Retrieved 17 September 2015, from  
[http://www.census.gov/hhes/www/cpstables/032015/perinc/pinc03\\_000.htm](http://www.census.gov/hhes/www/cpstables/032015/perinc/pinc03_000.htm)

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**SB2313**

Submitted on: 2/22/2016

Testimony for WAM on Feb 24, 2016 13:15PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

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