



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 1, 2016
Rm. 16, 9:30 a.m.

To: The Honorable Gilbert S.C. Keith-Agaran , Chair
The Honorable Maile S.L. Shimabukuro , Vice-Chair
Members of the Senate Committee on Judiciary & Labor

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

Re: S.B. No. 2313

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.

S.B. No. 2313, if enacted, will amend the provisions for equal pay and sex discrimination for substantially similar work. The bill also adds a subsection prohibiting an employer from taking action against an employee for disclosing wages or discussing wages.

The HCRC strongly supports S.B. No. 2313, with an amendment to clarify § 378-2.3 (3). The HCRC strongly supports subsection (b) stating that an employer may not prohibit an employee from disclosing wages, or discussing, inquiring, aiding or encouraging any other employee from doing so.

The bill amends HRS § 378-2.3 (4) by changing it to (a)(3) and making this change:

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

With the HCRC’s suggested amendment, paragraph (a)(3) will read :

(3) A bona fide ~~occupational qualification or factor other than sex only if:~~

- (A) It does not have a disparate impact based on sex; or
- (B) If it does have a disparate impact based on sex, the employer proves that the factor is job-related for the position in question and that there is no alternative business practice that would serve substantially the same business purpose with less sex based disparate impact; and
- (C) The factor is not being used to and is not operating to discriminate based on sex.

The HCRC's suggested paragraph (3) language above would amend the statute to use the correct terminology, because "bona fide occupational qualification" is incorrect. Additional language explains "bona fide factors other than sex," taking case law on disparate impact and court interpretations of the Equal Pay Act and Title VII into account.

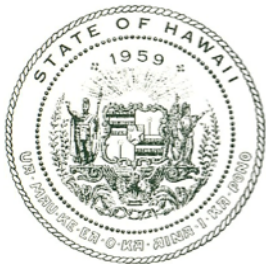
The HCRC requests that new subsections (c) and (d) be added, expressly providing:

(c) Nothing in this section shall limit any person's right under any other section of this Chapter to be free of compensation discrimination in employment.

(d) As used in this section, "sex" shall include gender.

The HCRC strongly supports this bill, and an end to pay disparity between men and women who do similar work. This bill will help to ensure that men and women receive equal pay for equal work in the same establishment. HCRC strongly supports the addition of subsection (b) which prohibits employer actions regarding pay disclosure. Employees must be permitted to discuss wage differences, in order to determine pay disparity. Free and open discussion will promote pay equality between genders. HCRC supports this bill as a step towards ending discrimination against women, particularly women of color, in the workplace as a result of lower wages than their male counterparts. Equal pay for equal work will benefit families, and children, as well as women employees.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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January 30, 2016

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

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

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

Thank you for this opportunity to provide testimony in strong 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.ⁱ 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.^{ii iii iv}

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 our women and families.

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 strongly supports the current language, but would like to propose some additional language in order for the language to be more effective in closing the wage gap.

The Commission proposes adding the following language:

HRS 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 requiring that an applicant's prior wages or salary history satisfy minimum or maximum criteria or by 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 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.

(e) Any employer shall, personally or through an agent, publish, list, or post, publicly or within the organization; or publish, list, or post with any employment agency, job-listing service, or website an advertisement to recruit candidates for hire or independent contractors to fill a position within the organization including the minimum rate of pay whether paid by the hour, shift, day, week, salary, piece, commission, or other; including overtime; with allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances. No employer shall pay wages for the position less than what were advertised.

Thank you for this opportunity to testify in strong support of SB 2313.

ⁱ 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

ⁱⁱ 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

ⁱⁱⁱ 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

^{iv} 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



To: Hawaii State Senate Committee on Judiciary and Labor
Hearing Date/Time: Monday, February 1, 2016, 9:30 a.m.
Place: Hawaii State Capitol, Rm. 016
Re: Testimony of Planned Parenthood of Hawaii in support of S.B. 2313

Dear Chair Keith-Agaran and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in support of S.B. 2313, which seeks to improve Hawaii law requiring gender equity in pay.

PPVNH’s mission is to ensure through advocacy that everyone has access to the health care they need and deserve and we support S.B. 2313 because it will help to close the wage gap between men and women, a gap that unfairly limits women’s economic power and, in turn, their health care. The wage gap is a social and reproductive injustice that directly impacts many of the women and men of all income levels who come through our doors seeking health care. S.B. 2313 will take a step towards remedying this injustice by improving Hawaii law to ensure that women are treated fairly and equally in the workplace.

Back in the early 1960s, American women working full-time, year-round got paid only 60 percent of what men earned. By 2012, the gender pay gap had shrunk by a little less than half. Full-time, year-round working women’s earnings are 78.6 percent of their male counterparts. Today, despite current Hawaii law requiring gender parity in pay, a woman in Hawaii – a daughter, a niece, a single mother struggling to provide for her children – is still highly likely to be paid less than a man doing the same job. The pay gap affects women and their families from all backgrounds, ages, and at all levels of education.

You might assume that any woman who’s getting paid less than a man in the same job will either get her employer to fix the problem or got to court and win a lawsuit. However, under Hawaii law, that’s easier said than done. Fear of retaliation – getting fired – may prompt the woman to stay silent, especially when good jobs are still scarce. Employers may be able to justify the lesser pay for women by citing education and experience requirements that are not related to the needs of the job. Savvy employers can keep the whole problem under wraps by imposing a gag rule, prohibiting workers from talking to each other about their pay. S.B. 2313 seeks to close these unfair loopholes and ensure that women are provided with an equal playing field from the start. Thank you for this opportunity to testify in support of S.B. 2313.

Sincerely,

Laurie Field
Hawaii Legislative Director and Public Affairs Manager

Natasha Ariyoshi
Kailua, HI 96734

January 24, 2016

To: Representative Gilbert Keith-Agaran, Chairperson
Representative Maile Shimabukuro, Vice-Chairperson
And members of the Senate Committee on Judiciary and Labor

From: Natasha Ariyoshi

RE: SB 2313, Relating to Equal Pay – STRONG SUPPORT

Chair, Vice-Chair, and members of the House Committee on Finance, I am testifying in **strong support** of SB 2313.

I am Natasha Ariyoshi, from the University of Hawaii School of Social Work.

As the recession continues, women are increasingly becoming the sole breadwinners of their families – making pay equity not just a matter of fairness but the key to families making ends meet. The American Recovery and Reinvestment Act, signed into law in February, is intended to save or create 3.5 million jobs over the next two years. According to a White House report, an estimated 42 percent of the jobs created – nearly 1.5 million – are likely to go to women.

The recovery package clearly is counting on women to play a leading role in the nation's economic recovery, and their ability to do so is strengthened considerably when women's paychecks are a fair reflection of their work. In fact, this is just one of the reasons why new legislation strengthening pay equity laws is not only necessary but timely, amounting to an "equity" economic stimulus.

According to the U.S. Census Bureau and Bureau of Labor Statistics, women who work full time earn about 78 cents for every dollar men earn. Because of the wage gap, since 1960, the real median earnings of women have fallen short by more than half a million dollars compared to men. Minority women face a larger wage gap. Compared to white men, African American women make 67 cents on the dollar (African American men make 78 cents).

In addition, wage discrimination lowers total lifetime earnings, thereby reducing women's benefits from Social Security and pension plans and inhibiting their ability to save not only for retirement but for other lifetime goals such as buying a home and paying for a college education. New research calculates that the pay inequity shortfall in women's earnings is about \$210,000 over a 35-year working life. I strongly support this bill.

As a woman in college and a member of the American Association of University Women, it is imperative that provisions are made for pay equity and gender discrimination.

Thank you for the opportunity to submit testimony.

Sincerely,
Natasha Ariyoshi

TESTIMONY to Senate Judicial Committee

S.B. 2313 Relating to Equal Pay

Monday, February 1, 2016

9:45 AM -- State Capitol Conference Room 016

Submitted in **OPPOSITION** by: Mary Smart, Mililani, HI 96789

Chairs Keith-Agaran, Vice-Chair Shimabukuro, and Committee Members:

1. I Strongly **OPPOSE SB2313**. Current laws provide adequate protections. This bill will make the workplace a lightning rod for frivolous complaints and lawsuits which will distract a business from achieving its productivity goals and may negatively impact its ability to continue operating.
2. "Equal Pay for Equal Work" mandates is a [Marxist](#) concept that sounds nice but hurts workers. Monies that could go into a workers paycheck and take-home pay end up being taxed or reduced to pay for the bureaucracy overhead needed to implement and maintain the program. Instead of paying the worker the "regulator and enforcer" gets his/her cut of what could be the person's salary. This concept sounds good but hurts workers, the very people it is supposed to help.
3. Although the federal government has similar policies through their grade levels, these pay scales are circumvented in many ways, especially the ["bonus"](#) where favorites are given the higher financial rewards and perks while others may not get anything.
4. The military gives equal pay to people in a paygrade, but in that system, some jobs in "equal" pay grade are not equally difficult, or challenging or have the same scope of responsibility, even though there is a whole administrative oversight agency to maintain the personnel system. Private enterprise cannot stay in business for long trying to establish such a top-heavy oversight entity.
5. Everyone should be allowed to work for the pay they can obtain through their own negotiation and demonstration of skills, if they so choose. Not all people in the same job do the same quality of work and should not be paid the same just because their job title is the same. People are different and should be allowed to be paid differently. Some people want more flexibility in the job with shorter hours or flex time. An individual should be able to negotiate individually with an employer to achieve a satisfying schedule and pay that meets their needs even though it might not be of interest to any of the other employees. If one person can do twice the work in half the time of another worker, the employer should be able to compensate the higher achiever according to his/her value to the company, not some "arbitrary standard".

6. In some cities [women earn more than men](#) , and other cities men might earn more than women. In the United States we are free to move to the city that might benefit us the most. We don't need government getting involved in setting pay scales. There are [politicians](#) that espouse the virtues of "equal pay for equal work" and then pay their women employees less than men. Today, many people would be happy to have a full time job in a field of their choosing, even with a low starting salary. Don't make it any more difficult for business owners to hire people, which this bill would do. This bill would also diminish employee initiative as eventually, everyone would work to the lowest acceptable level of productivity. Our country's productivity has been exceptional because it has been based on the ability of hard workers to be rewarded based on merit, not on a job title. Free market capitalism has made our country prosperous.

7. It is time to ignore the slogans and understand the worker owns the value of the sweat of their brow -- not government. When someone other than the worker/employee sets the value of their own work we called that slavery (or communism), which we supposedly abolished. Please don't bring slavery back (or communism) with SB 2313 -- **VOTE NO.**

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB2313 on Feb 1, 2016 09:30AM*
Date: Thursday, January 28, 2016 11:17:53 AM

SB2313

Submitted on: 1/28/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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Keith Agaran3 - Ashlee

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 29, 2016 9:41 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB2313 on Feb 1, 2016 09:30AM*

SB2313

Submitted on: 1/29/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

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Keith Agaran3 - Ashlee

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 31, 2016 10:25 AM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB2313 on Feb 1, 2016 09:30AM*

SB2313

Submitted on: 1/31/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Springer Kaye	Individual	Support	No

Comments:

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