
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 is committed to ensuring that
2 women and men are paid equally for work that is substantially
3 equal with respect to the skill, effort, and responsibility
4 required to perform the work and the conditions under which the
5 work is performed. The legislature recognizes that Act 108,
6 Session Laws of Hawaii 2018, is a significant step toward
7 ensuring that the pay disparity between men and women
8 diminishes. However, more needs to be done.

9 The American Association of University Women reports that
10 in 2017, median annual earnings for women in Hawaii were just
11 eighty-one per cent of men's earnings, which represents an
12 almost twenty per cent gap. Hawaii ranks twenty-third in income
13 equality out of all states and the District of Columbia,
14 according to the most recent census data. Furthermore, native
15 Hawaiian and other Pacific islander women earn only sixty-two
16 per cent of white male earnings nationally, and Hispanic women
17 earn even less.



1 Hawaii has led the way in civil rights. This Act proposes
2 to establish Hawaii as a leader in the area of pay equity and
3 clarifies that Hawaii's law is more protective of pay equity
4 rights than the federal Equal Pay Act of 1963 or Title VII of
5 the Civil Rights Act of 1964.

6 The purpose of this Act is to:

- 7 (1) Amend the list of protected classes under Hawaii's
8 equal pay statute to make the protections afforded by
9 this section consistent with the state statute that
10 prohibits employment discrimination;
- 11 (2) Provide pay transparency by requiring employers to
12 make salary range information available to employees
13 and job candidates, which will help employers manage
14 their pay expenses and encourage pay equity;
- 15 (3) Clarify the factors that can be used by employers to
16 justify differences in compensation based on
17 seniority, merit, or other non-discriminatory
18 purposes;
- 19 (4) Create an exception to the prohibition on employer
20 retaliation for discussion of employee wages if the
21 knowledge of the employee's wage arises from human



1 resources, payroll, or legal professional
 2 responsibilities in the workplace; and
 3 (5) Update the term "equal work" as used in state non-
 4 discrimination statutes to "substantially similar
 5 work," which is the more accurate term used in many
 6 other states.

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

9 "§378-2.3 Equal pay [~~sex discrimination~~]. (a) No
 10 employer shall discriminate [~~between~~] among employees [~~because~~
 11 ~~of sex,~~] by paying [~~wages~~] compensation to employees [~~in an~~
 12 ~~establishment~~] at a rate less than the rate at which the
 13 employer pays [~~wages~~] compensation to employees of [~~the~~
 14 ~~opposite~~] another race, sex [~~in the establishment~~] including
 15 gender identity or expression, sexual orientation, age,
 16 religion, color, ancestry, disability, marital status, arrest
 17 and court record, or domestic or sexual violence victim status
 18 for [~~equal~~] substantially similar work [~~on jobs the performance~~
 19 ~~of which requires equal~~] when viewed as a composite of skill,
 20 effort, and responsibility, [~~and that are~~] performed under
 21 similar working conditions. [~~Payment~~]



1 (b) Compensation differentials [resulting from:] do not
2 violate this section if the defendant demonstrates that the
3 differential solely results from any of the following factors:

4 (1) A non-discriminatory seniority system; provided that
5 time spent on leave due to a pregnancy-related
6 condition or parental, family, or medical leave, shall
7 not reduce seniority;

8 (2) A non-discriminatory merit system;

9 (3) A system that objectively measures earnings by
10 quantity or quality of production; or

11 ~~[(4) A bona fide occupational qualification; or~~

12 ~~(5) A differential based on any other permissible factor~~
13 ~~other than sex[,]~~

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

15 (4) A factor that has neither the purpose nor the effect
16 of discriminating on any basis prohibited by this
17 section.

18 (c) For the purposes of subsection (b) (4), a factor has
19 the purpose of discriminating on a basis prohibited by this
20 section if its general use or application in a particular case
21 is motivated, in whole or in part, by considerations of race,



1 sex including gender identity or expression, sexual orientation,
2 age, religion, color, ancestry, disability, marital status,
3 arrest and court record, or domestic or sexual violence victim
4 status.

5 (d) An employer who pays a wage in violation of this
6 section shall not, in order to comply with the provisions of
7 this section, reduce the wage rate of any employee.

8 (e) The agreement of an employee to work for less than the
9 wage to which the employee is entitled under this section is not
10 a defense to an action under this section.

11 [~~(b)~~] (f) An employer shall not retaliate or discriminate
12 against an employee for, nor prohibit an employee from,
13 disclosing the employee's wages, discussing and inquiring about
14 the wages of other employees, or aiding or encouraging other
15 employees to exercise their rights under this section[-];
16 provided that this subsection shall not apply to discussion of
17 employee wages if knowledge of the wages stems from human
18 resources, payroll, or legal professional responsibilities in
19 the workplace.

20 (g) For purposes of this section, "substantially similar
21 work" means work that is mostly similar in skill, effort, and



1 responsibility, and is performed under similar working
2 conditions; provided that:

3 (1) "Skill" means the experience, ability, education, and
4 training required to perform the job;

5 (2) "Effort" means the amount of physical or mental
6 exertion needed to perform the job; and

7 (3) "Responsibility" means the degree of accountability or
8 duties required in performing the job."

9 SECTION 3. Section 378-2.4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§378-2.4[+] **Employer inquiries into and consideration**
12 **of salary or wage history.** (a) No employer, employment agency,
13 or employee or agent thereof shall:

14 (1) Inquire about the salary history of an applicant for
15 employment; or

16 (2) Rely on the salary history of an applicant in
17 determining the salary, benefits, or other
18 compensation for the applicant during the hiring
19 process, including the negotiation of an employment
20 contract.



1 (b) Notwithstanding subsection (a), an employer,
2 employment agency, or employee or agent thereof, without
3 inquiring about salary history, may engage in discussions with
4 an applicant for employment about the applicant's expectations
5 with respect to salary, benefits, and other compensation;
6 provided that if an applicant voluntarily and without prompting
7 discloses salary history to an employer, employment agency, or
8 employee or agent thereof, the employer, employment agency, or
9 employee or agent thereof, may consider salary history in
10 determining salary, benefits, and other compensation for the
11 applicant, and may verify the applicant's salary history.

12 (c) This section shall not apply to:

- 13 (1) Applicants for internal transfer or promotion with
14 their current employer;
- 15 (2) Any attempt by an employer, employment agency, or
16 employee or agent thereof, to verify an applicant's
17 disclosure of non-salary related information or
18 conduct a background check; provided that if a
19 verification or background check discloses the
20 applicant's salary history, that disclosure shall not
21 be relied upon during the hiring process for purposes



1 of determining the salary, benefits, or other
2 compensation of the applicant, including the
3 negotiation of an employment contract; and

4 (3) Public employee positions for which salary, benefits,
5 or other compensation are determined pursuant to
6 collective bargaining.

7 (d) An employer, upon reasonable request, shall provide
8 the pay scale for a position to an applicant applying for
9 employment and disclose the factors the employer considers in
10 setting salary levels.

11 (e) Upon hire, and thereafter annually and upon request,
12 an employer shall provide an employee the wage range for the
13 employee's job title and for jobs within the employer's business
14 that are substantially similar with respect to the skill,
15 effort, and responsibility required to perform the jobs and the
16 conditions under which the jobs are performed.

17 (f) An employer shall disclose an hourly rate or salary
18 range in all job listings and shall select a salary within the
19 posted range or, if necessary, republish each job listing with
20 an adjusted range before selecting an hourly pay rate or salary
21 for a prospective employee.



1 (g) An unlawful employment practice in violation of this
2 section occurs when:

3 (1) An employer adopts a discriminatory compensation
4 decision or other practice;

5 (2) An individual becomes subject to the discriminatory
6 decision or practice; or

7 (3) An individual is affected by application of the
8 decision or practice, including each time wages,
9 benefits, or other compensation are paid.

10 ~~[(d)]~~ (h) For purposes of this section:

11 "Compensation" shall be broadly construed. "Compensation"
12 shall include, but not be limited to, use of or access to
13 employee expense accounts, use of a vehicle, travel budgets,
14 cost reimbursements, paid vacation or sick leave, sabbatical
15 benefits, endowed chairs, insurance, stock options, pension
16 contributions, and other employee benefits.

17 "Inquire" means to:

18 (1) Communicate any question or statement to an applicant
19 for employment, an applicant's current or prior
20 employer, or a current or former employee or agent of
21 the applicant's current or prior employer, in writing,



1 verbally, or otherwise, for the purpose of obtaining
2 an applicant's salary history; or

3 (2) Conduct a search of publicly available records or
4 reports for the purpose of obtaining an applicant's
5 salary history;

6 provided that this shall not include informing an applicant, in
7 writing or otherwise, about the proposed or anticipated salary
8 or salary range for the position.

9 "Salary history" includes an applicant for employment's
10 current or prior wage, benefits, or other compensation, but
11 shall not include any objective measure of the applicant's
12 productivity, such as revenue, sales, or other production
13 reports."

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on January 1, 2050.



Report Title:

Equal Pay; Salary or Wage History; Employment

Description:

Conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination. Clarifies allowable justifications for compensation differentials and remedies for pay disparity. Requires employers to disclose wage ranges to employees and prospective employees. Exempts wage disclosure and discussion from the prohibitions on employer retaliation or discrimination if knowledge of the wages stems from human resources, payroll, or legal professional responsibilities in the workplace. (HB1192 HD2)

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