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TO:
Committee on Judiciary
Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 26, 2019
TIME: 2:05pm
PLACE: Conference Room 325

RE: HB1192 HD1 Relating to Equal Pay

Position: Comments

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA has concerns about certain language in this measure. While this measure makes some effort to define the term “substantially similar work” this language is still very open to interpretation. Inserting this type of legally vague terminology into statute will leave employers open to a range of frivolous lawsuits that can be very costly and will not further the goals of this measure.

The section of this measure mandating that employers provide wage ranges may not be feasible under certain circumstances. The hiring process often involves adjusting the exact job specifications based on a number of factors, most importantly the individual eventually hired for the position. It will be impossible for many employers to list an accurate wage range for a position that may change for an employee they haven’t hired yet.

We thank you for the opportunity to testify.



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 26, 2019
Rm. 325, 2:05 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

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

Re: H.B. No. 1192, H.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 (on the basis of disability). 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.

For the reasons discussed below, the HCRC supports H.B. No. 1192, H.D. 1, with suggested revisions to the amendments to HRS § 378-2.4 for clarification purposes.

H.B. No.1192, H.D. 1, if enacted, will amend HRS §§ 378-2.3 and 378-2.4, the Hawai‘i state law equal pay law.

Specifically, Section 2 of the bill amends HRS § 378-2.3 in five respects: 1) to prohibit discrimination in compensation on not only sex, but on an expanded number of protected bases, the same protected bases as those protected under HRS § 378-2(a)(1) (race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status); 2) to expand equal pay protections to all employees, not just to employees who work in the same “establishment;” 3) to change the HRS 378-2.3 prohibition against discrimination in compensation for “equal work” to a prohibition against discrimination in compensation for “substantially similar work;” 4) to amend HRS § 378-2.3(b), making it expressly clear that the four affirmative defenses to an equal pay claim that employers can establish must be based on *non-discriminatory* factors; and, 5) to amend HRS § 378-2.3 by adding new subsections (d) and (e), which provide that employers cannot cure an equal pay violation by reducing the

wage rate of a higher-paid employee, and an employee's agreement to a lower rate of pay is not a defense to an equal pay claim.

Discussion of the merits of the specific proposed amendments requires understanding the federal Equal Pay Act (EPA) and its relationship to the Title VII prohibition against discrimination with respect to compensation, but it is crucial to recognize the differences between federal law and state equal pay law, HRS §§ 378-2.3 and 378-2.4, and the state fair employment law prohibition against discrimination in compensation, HRS § 378-2(a)(1).. The HCRC offers the following discussion to inform and support the legislature's consideration of and deliberation over the proposed amendments to the state equal pay law.

Federal Law: Differences and Interplay Between EPA and Title VII

The Equal Pay Act of 1963 predated Title VII of the Civil Rights Act of 1964.

The EPA prohibits wage discrimination on the basis of sex between employees within any "establishment," by paying employees of one sex at a lower rate than is paid to employees of the opposite sex for equal work, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

The EPA provides for four affirmative defenses, permitting differences in wages if the differential is caused by: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

Title VII prohibits discrimination in compensation, terms, conditions, or privileges of employment, based on race, color, religion, sex, or national origin.

Key differences between the EPA and Title VII

Scope of protection. The EPA is limited to sex-based differentials in wages. It does not prohibit discrimination in other aspects of employment, nor prohibit discrimination on bases other than sex, as prohibited under Title VII.

Scope of coverage. EPA coverage is limited to employers who are subject to the Fair Labor Standards Act, so the EPA covers employers who have annual sales exceeding \$500,000 or are engaged in interstate commerce, regardless of the number of employees, but excludes certain industries. Title VII covers employers of 15 or more employees.

"Equal work" requirement. The EPA prohibits wage discrimination based on sex for equal work, the performance of which requires equal skill, effort, and responsibility. Restrictive federal court interpretations of this "equal work" requirement have made it nigh near impossible for most complainants and plaintiffs to establish prima facie EPA claims. Title VII analysis does not require "equal work," but looks at how similarly situated employees are treated.

Affirmative defenses. The EPA provides for four affirmative defenses, including the defense that a challenged wage differential is based on "any factor other than sex." There has been disagreement

between the federal circuits as to whether this catch-all defense recognizes only legitimate business-related factors other than sex, or literally and any factor other than sex. The broad catch-all defense has been interpreted to rule out mixed-motive claims.

A June 12, 1964, amendment to Title VII, known as the Bennett Amendment, imported the EPA defenses into Title VII's framework for analysis of sex-based discrimination in compensation. There has been no similar amendment to our state fair employment statute.

EPA does not require proof of discriminatory intent. The EPA only requires proof of pay differential between employees of opposite sexes in the same establishment for equal work. Once this is proven, employer has the opportunity to establish one of the four affirmative defenses. If no affirmative defense, an EPA violation has been established. In most Title VII discrimination cases, discriminatory intent is proved by inference, using the basic *McDonnell Douglas* analytical framework that is applied in employment discrimination cases based on circumstantial evidence.

Remedies. The EPA and Title VII have different remedies, with EPA remedies set forth in the Fair Labor Standards Act, not in Title VII.

State Law: Differences and Interplay Between EPA and HRS § 378-2

Hawai'i enacted its fair employment law in 1963, prohibiting discrimination in hiring, employment, barring or discharging from employment, or otherwise discriminating in compensation, terms, conditions, or privileges of employment. That protection, as subsequently amended, is found at HRS § 378-2(a)(1):

§378-2 Discriminatory practices made unlawful; offenses defined. (a) It shall be an unlawful discriminatory practice:

(1) Because of race, **sex including gender identity or expression**, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, **or otherwise to discriminate against any individual in compensation** or in the terms, conditions, or privileges of employment;

* * * * *

In contrast to the development of federal law, our state equal pay law, modeled on the federal EPA, did not pre-date the enactment of this comprehensive fair employment law prohibiting discrimination on numerous bases in all aspects of employment, including compensation. The state equal pay law was first enacted in 2005, 2005 Haw. Sess. Laws Act 35, and amended in 2018, 2018 Haw. Sess.

Laws Act 108, to add protection against retaliation and a prohibition against employer inquiries into salary history.

It is important to note that Section 1 of the 2005 Act 35 expressly states, “*It is not the intent of the legislature to affect or diminish the existing, broader protections provided under part I of chapter 378, Hawaii Revised Statutes.*”

The state equal pay law, as amended, is codified at HRS §§ 378-2.3 and 378-2.4:

§378-2.3 Equal pay; sex discrimination. (a) No employer shall discriminate between employees because of sex, by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions. Payment differentials resulting from:

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by quantity or quality of production;
- (4) A bona fide occupational qualification; or
- (5) A differential based on any other permissible factor other than sex[.]

do not violate this section.

(b) An employer shall not retaliate or discriminate against an employee for, nor prohibit an employee from, disclosing the employee's wages, discussing and inquiring about the wages of other employees, or aiding or encouraging other employees to exercise their rights under this section. [L 2005, c 35, §2; am L 2018, c 108, §3]

And,

[§378-2.4] Employer inquiries into and consideration of salary or wage

history. (a) No employer, employment agency, or employee or agent thereof shall:

- (1) Inquire about the salary history of an applicant for employment; or
- (2) Rely on the salary history of an applicant in determining the salary, benefits, or other compensation for the applicant during the hiring process, including the negotiation of an employment contract.

(b) Notwithstanding subsection (a), an employer, employment agency, or employee or agent thereof, without inquiring about salary history, may engage in discussions with an applicant for employment about the applicant's expectations with respect to salary,

benefits, and other compensation; provided that if an applicant voluntarily and without prompting discloses salary history to an employer, employment agency, or employee or agent thereof, the employer, employment agency, or employee or agent thereof, may consider salary history in determining salary, benefits, and other compensation for the applicant, and may verify the applicant's salary history.

(c) This section shall not apply to:

- (1) Applicants for internal transfer or promotion with their current employer;
- (2) Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant's disclosure of non-salary related information or conduct a background check; provided that if a verification or background check discloses the applicant's salary history, that disclosure shall not be relied upon during the hiring process for purposes of determining the salary, benefits, or other compensation of the applicant, including the negotiation of an employment contract; and
- (3) Public employee positions for which salary, benefits, or other compensation are determined pursuant to collective bargaining.

(d) For purposes of this section:

"Inquire" means to:

- (1) Communicate any question or statement to an applicant for employment, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing, verbally, or otherwise, for the purpose of obtaining an applicant's salary history; or
- (2) Conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history; provided that this shall not include informing an applicant, in writing or otherwise, about the proposed or anticipated salary or salary range for the position.

"Salary history" includes an applicant for employment's current or prior wage, benefits, or other compensation, but shall not include any objective measure of the applicant's productivity, such as revenue, sales, or other production reports. [L 2018, c 108 §2]

Differences between the HRS § 378-2 prohibition against discrimination in employment, including compensation, and the equal pay protections of HRS § 378-2.3 and the HRS § 378-2.4 prohibition against employer inquiries into salary history

Scope of protection. The protections of HRS §§ 378-2.3 and 378-2.4 are limited to sex-based differentials in wages and prohibited inquiries into salary history, respectively. They do not prohibit discrimination in other aspects of employment, nor prohibit discrimination on bases other than sex, as prohibited under HRS § 378-2.

Scope of coverage. There is no difference in coverage, as HRS chapter 378, part I, covers employers of one or more employees.

“Equal work” requirement. HRS § 378-2.3, like the federal EPA, prohibits wage discrimination based on sex for equal work, the performance of which requires equal skill, effort, and responsibility. It is unfortunate that the state law is modeled after the EPA in this respect. While restrictive federal court interpretations of the EPA “equal work” requirement are not binding on state courts’ interpretation of state law, they can be considered persuasive guidance, particularly where the state statute does not differ from the federal law in relevant detail. *Furukawa v. Honolulu Zoological Soc.*, 85 Hawai’i 7, 13 (1997).

HRS § 378-2 analysis does not require “equal work,” but looks at how similarly situated employees are treated.

Affirmative defenses. HRS § 378-2.3, like the federal EPA, provides for four affirmative defenses, including the defense that a challenged wage differential is based on “any factor other than sex.” It is unfortunate that the state law is modeled after the EPA in this respect. While restrictive federal court interpretations of the EPA affirmative defenses are not binding on state courts’ interpretation of state law, they can be considered persuasive guidance, particularly where the state statute does not differ from the federal law in relevant detail. *Furukawa v. Honolulu Zoological Soc.*, 85 Hawai’i 7, 13 (1997).

As noted above, a June 12, 1964, amendment to Title VII, known as the Bennett Amendment, imported the EPA defenses into Title VII’s framework for analysis of sex-based discrimination in compensation. There has been no similar amendment to our state fair employment statute and, more so, the original 2005 equal pay act, 2005 Haw. Sess. Laws Act 35, § 1, expressly states that it was not the intent of the legislature to diminish existing, broader protections provided under part I of chapter 378 (including § 378-2) HRS, so the affirmative defenses provided for HRS § 378-2.3 claims *are not* imported or applicable to HRS § 378-2 claims of discrimination in compensation.

HRS § 378-2.3 and the HRS § 378-2.4 do not require proof of discriminatory intent. HRS § 378-2.3, like the federal EPA, only requires proof of pay differential between employees of opposite sexes in the same establishment for equal work. Once this is proven, employer has the opportunity to establish one of the four affirmative defenses. If no affirmative defense is proven, an HRS § 378-2.3 violation has been established.

Similarly, an HRS § 378-2.4 violation is established by evidence of an unlawful inquiry about or consideration of salary history, without proof of discriminatory intent, except that an employer can consider salary history that is disclosed by an applicant voluntarily and without prompting.

In most HRS § 378-2 cases, discriminatory intent is proved by inference, using the basic *McDonnell Douglas* analytical framework that is applied in employment discrimination cases based on circumstantial evidence.

Remedies. There is no difference in remedies for violations of HRS §§ 378-2, 378-2.3, and 378-2.4, as provided in HRS §§ 378-5 and 368-17.

DISCUSSION AND RECOMMENDATIONS

HRS § 378-2(a)(1) already prohibits discrimination in compensation based on race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status. If the legislature amends § 378-2.3 to add the protected bases in addition to “sex,” the HCRC requests an amendment to Section 1 of the bill, to add language identical to that included in Section 1 of the 2005 Act 35, expressly stating: *“It is not the intent of the legislature to affect or diminish the existing, broader protections provided under part I of chapter 378, Hawaii Revised Statutes.”*

The other proposed amendments to HRS § 378-2.3, if enacted, will create relevant differences between the state equal pay statute and the federal EPA. Those differences and the legislature’s statement of its legislative intent will effectively preclude the importation and adoption of restrictive interpretations of the federal EPA.

Enactment of the existing HRS § 378-2.3(b) prohibition against retaliation against employees for disclosing, discussing, or inquiring, or aiding or abetting or encouraging the exercise of rights under the statute, was an important step toward the kind of transparency that will serve to facilitate achievement of pay equity. The proposed amendment of HRS § 378-2.4 to require employer posting and disclosure of pay information and ranges is intended to provide additional transparency. In the absence of such transparency, it is difficult for applicants and employees to have knowledge and evidence of equal pay violations.

SUGGESTED AMENDMENTS

Section 3 of the bill amends HRS § 378-2.4 to add new subsection (g) and (h), amending HRS § 378-2.4 to provide clarification of when an equal pay law violation occurs, and to broadly define “compensation.” The proposed amendments are as follows:

In subsection (h) The reference to “this section” should be amended to apply to “this section and section 378-2.3.” (but not to the entirety of chapter 378, part I).

Delete “upon reasonable request” in subsection (d) because there is no definition, and the proposed bill requires disclosure of amounts

Subsection (f) calls for pay transparency, but would also require job reposting, and should be deleted, after the word “job listing.”

Types of compensation is already very broad, and a suggested amendment is to add “housing.” The changes are shown below.

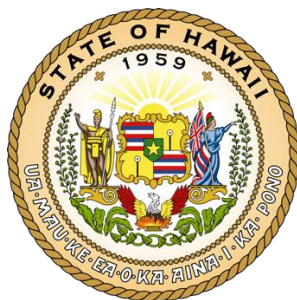
(d) An employer ~~[, upon reasonable request,]~~ shall provide the pay scale for a position to an applicant applying for employment and disclose the factors the employer considers in setting salary levels.

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

(g) An unlawful employment practice is in violation of this section and section 378-2.3 when:

- (1) a discriminatory compensation decision or other practice is adopted;
- (2) an individual becomes subject to the decision or practice; or
- (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid.

(h) For the purposes of this section and section 378-2.3, the meaning of “compensation” is to be construed broadly, to include such items as, but not limited to, employee expense accounts, use of a vehicle, housing, travel budgets, other cost reimbursements, paid vacation or sick leave, sabbatical benefits, endowed chairs, insurance, stock options, pension contributions, and other employee benefits.



Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the House Committee on Judiciary

In Support of HB1192 HD1
Tuesday, February 26, 2019, at 3:25 p.m. in Room 309

Dear Chair Lee, Vice Chair San Buenaventura, and Honorable Members,

The Hawai'i State Commission on the Status of Women writes in support of HB1192 HD1, which would promote pay equality by conforming statutory prohibitions against wage discrimination with other prohibitions on employment discrimination and requiring employers to disclose wage ranges to employees and prospective employees.

In Hawai'i, unfair gaps in pay persist. Women make 84 cents to every dollar earned by men. The wage gap is even more pronounced for women of marginalized identities. The most extreme disparities exist among earnings of Native Hawaiian and immigrant women (naturalized or undocumented). If trends continue, Hawai'i will not achieve equal pay until 2100. This trend contributes to higher poverty rates, especially among women of color.

Social science research has also shown that women are often penalized for initiating pay negotiation. The requirement that employers disclose a "pay scale" or comparative information on salary for comparable workers for the position sought within an organization would help alleviate implicit biases and address the negative impact on women who negotiate starting compensation.

Accordingly, the Commission respectfully urges the Committee to pass HB1192.

Sincerely,

Khara Jabola-Carolus

HB-1192-HD-1

Submitted on: 2/22/2019 5:58:23 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB1192 HD1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii



of Hawaii

February 23, 2019

From: Younghee Overly, Public Policy Chair, AAUW Hawaii

To: Hawaii State House Committee on Judiciary

Hearing Date/Time: February 26, 2019 2:05PM

Place: Hawaii State Capitol, Rm. 325

Re: Testimony in SUPPORT of HB1192 HD1

Dear Chair Lee, Vice-Chair San Buenaventura, and members of the House Committee on Judiciary,

I am grateful for this opportunity to testify in strong support of HB1192 HD1, which directly confronts the gender pay gap in Hawaii. This is an issue which hurts not only women but families. Approximately 52,000 Hawaiian households survive on female wages, and 17% of these families are struggling with incomes below the poverty level.¹ If the \$8,149 annual gender pay gap is eliminated, a working woman in Hawaii would have enough money, on average, to purchase 11.2 additional months of child care and 5.5 additional months of rent.² To make the situation worse, the gender pay gap has widened in Hawaii. The median annual earnings for women were 84% of men's earnings in Hawaii in 2015 (thus 16% gender pay gap) and were 81% in 2017 (thus 19% gender pay gap), barely above the 80% national average.³

Not only would this bill provide stronger equal pay protection for the employees, it would help businesses better manage their pay expenses, recruit and retain employees, and potentially improve employee morale.

- Research shows that workers stay longer and are more productive, when working for companies which treat them with dignity. A recent Harvard-Berkeley study showed that pay inequality decreased worker attendance, cooperation, and output.⁴
- Salary transparency and attempts at pay equity will attract millennials; will be more attractive in a competitive market.⁵

¹ National Partnership for Women and Families – Hawaii Women and the Wage Gap April 2017, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-hi-wage-gap.pdf>

² National Partnership for Women and Families – What's the Wage Gap in the States, September 2018, <http://www.nationalpartnership.org/our-work/workplace/4-2018-wage-gap-map.html>

³ National Partnership for Women and Families – America's Women and the Wage Gap, September 2018, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>; National Partnership for Women and Families – Hawaii Women and the Wage Gap April 2017, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-hi-wage-gap.pdf>

⁴ Emily Breza, Supreet Kaur & Yogita Shamdasanani 2016 "The Morale Effects of Pay Inequality," *NBER Working Papers*, National Bureau of Economic Research

⁵ Forbes, <https://www.forbes.com/sites/jessicalutz/2017/11/30/millennials-are-slowly-killing-salary-secrecy-and-thats-a-good-thing/#67a129946015>

- Being up front about wages saves businesses time so that they are not interviewing candidates that will eventually turn them down. In addition to fairness, this is also about efficiency.⁶
- Salary ranges help employers control their pay expenses and ensure pay equity among employees. It is critical that employers have rational explanations for why they pay their employees a certain rate, and defined salary ranges help accomplish that.⁷

Hawaii is considered as a state with only moderate equal pay protection. Seven other states (California, Illinois, Maryland, Massachusetts, New Jersey, Oregon, and Washington) have equal pay protection much stronger than the state of Hawaii.⁸ Members of AAUW of Hawaii believe Hawaii can do better and this bill's measures can succeed with a minimal cost or disruption to employers. We believe we can establish Hawaii as a leader in the field of pay equity, as Hawaii has led the way in civil rights.

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 450 active members with over 1700 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Please pass this measure and mahalo for this opportunity to testify in support of this important bill.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials 'JG' or similar, written in a cursive style.

⁶ Glassdoor, "Is Salary Transparency More Than a Trend", https://www.glassdoor.com/research/app/uploads/sites/2/2015/04/GD_Report_2.pdf

⁷ Society for Human Resource Management, "How to Establish Salary Range", <https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/howtoestablishsalaryranges.aspx>

⁸ AAUW Policy Guide to Equal Pay in the States, <https://www.aauw.org/resource/state-equal-pay-laws/>



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 1192 HD1 – Relating to Equal Pay
House Committee on Judiciary
Tuesday, February 26, 2019, 2:05 PM, conference room 325

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **HB 1192 HD1**. We commend you for passing SB 2351 in 2018, which took strides to reduce the gender wage gap in Hawai'i. We urge you to continue making improvements by passing HB 1192 HD1.

According to the U.S. Bureau of Labor Statistics, Hawai'i women had median usual weekly earnings of \$734 or 80.0 percent of the \$918 median usual weekly earnings of their male counterparts in 2017. That's lower than the national ratio of 81.8 percent. After reaching its peak of 92.8 percent in 2014, this ratio has decreased in Hawai'i in each of the past three years.

The National Partnership for Women and Families pegs the pay gap as taking \$2.5 billion out of the pockets of women statewide, or \$7,640 per woman per year. According to the National Women's Law Center, the lifetime wage gap per woman in Hawai'i is \$305,600 over a 40-year career.

The problem of the wage gap is only compounded in Hawai'i by our high cost of living. These burdens make it very difficult for women to pursue further education, start a business, buy a home, or save for retirement. Economic insecurity also makes it more difficult for women to leave domestic violence situations. These all have effects on future generations.

Three out of ten Hawai'i single mothers with children under the age of 18 live in poverty. When their children are all under the age of five, one-third of single mothers are poor. Meanwhile, research from the Institute for Women's Policy Research estimates that eliminating the gender wage gap would reduce the poverty rate among single mothers at the national level by almost half.

We can and should find ways to better ensure that our women and their children can find economic security in the Aloha State. The modest and common-sense proposals contained within this bill would move us closer towards that goal.

We appreciate your consideration of this testimony.

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

Hearing Date: Thursday, February 26, 2019, 2:05 pm, Room 325

To: House Committee on Judiciary
Chair, Representative Chris Lee
Vice Chair, Representative Joy A. San Buenaventura

From: Jean Evans, MPH (Individual, jevans9999@yahoo.com, 808-728-1152, 99-1669 Hoapono Pl., Aiea, HI 96701)

Re: TESTIMONY IN SUPPORT OF HB 1192, HD1 - RELATING TO EQUAL PAY

My name is Jean Evans. I retired after 40 years holding executive positions in Hawaii non-profit agencies. In these positions I have interviewed and hired hundreds of applicants. I am also a member of AAUW Hawaii.

I am strong support of HB 1192, HD1 Relating to Equal Pay.

It is well documented that there is a large gap in gender pay across the nation and in Hawaii where women earn only 81% of what men earn. This pay gap hits women especially hard here in Hawaii with our notoriously high cost of living often making it very difficult to make ends meet.

Non-profit agencies in Hawaii have historically offered low salaries which did not reflect the level of education, experience and responsibility associated with the positions. These agencies, which were predominately filled by females with a few male top executives, were seen as helping and giving organizations and so perpetuated the idea that the women should work for lower wages for the good of the community. Slowly this mind-set is changing to reflect a more professional attitude toward the non-profit workforce. However, this change has been slow and contributes to the state-wide wage gap.

When I applied for the two executive director positions which I subsequently secured, I had no idea of the salary ranges or even if there were any. When I inquired about the salary I was told only that it was "flexible". That response did not give me a clue as to what to expect. Only after being in these positions with a salary I thought fair, did I discover that previous Executive Directors were compensated well above me. In one case over twice my salary. Interestingly, one was a female and the other a male. Offered salaries amounts seemed arbitrary and unfair and got me looking for positions elsewhere.

As an executive seeking to hire qualified people, I interviewed many good candidates only to find out that their salary requirements were higher than I could offer. If I had been required to post the ranges I could have saved their time and mine. Based on the budget, I knew what the salary ranges were, but formally posting those was not the customary way recruitment was done. I realize now that compensation transparency would have helped me both as an employer and employee.

In addition to the salary range requirement, this bill includes language making protected classes in the section consistent with other statutes that prohibit employment discrimination. It also clarifies factors that can be used by employers to justify differences in compensation and prohibits reducing another employee's pay or an agreement by employees to accept a lower wage than that they are entitled as a defense. Finally, this measure uses the more accurate term, "substantially similar work" instead of "equal work".

Employee turnover continues to be a problem in Hawaii, especially when unemployment is low. This bill is an important step in reducing turnover by ensuring competitive salaries, equal treatment, and assisting employers to control their expenses with set pay ranges.

Let Hawaii become a leader in the area of salary transparency by passing this legislation as another step toward leveling salary discrepancies and retaining talented employees. I see this measure as a win for both employers and employees. I encourage your support for this bill.

Mahalo for allowing me to submit my testimony today.

Jean Evans



Fujiwara & Rosenbaum, LLLC

*Alahea Corporate Tower
1100 Alahea Street 20th Floor
Honolulu, Hawaii 96813*

LATE

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Elizabeth Jubin Fujiwara, Senior Partner,
Fujiwara & Rosenbaum, LLLC

Re: **H.B. 1192 H.D.1**

I have specialized in civil rights and employment law as a plaintiff's attorney since 1986 and have done several discrimination cases for women regarding equal pay. Women of every race are paid less than men, at all education levels — and it only gets worse as women's careers progress. Despite the fact that women have made enormous gains in educational attainment and labor force involvement in the last several decades, unequal pay remains pervasive in 97 percent of occupations, showing that no matter what their job, women are paid less than men doing the same job in nearly every sector of work.

H.B. No. 1192 H.D.1 would amend H.R.S. § 378-2.3 and 378-2.4, the Hawai'i state law equal pay law.

With the Hawaii Civil Rights Commissions' suggested revisions to the amendments to H.R.S. § 378-2.4 for clarification our law firm strongly supports H.B. No. 1192 H.D.1 for several reasons:

1. it is well-documented that women, and especially women of color, face overt discrimination and unconscious biases in the workplace, including in pay. A study conducted by labor economists Francine Blau and Lawrence Kahn found that 38 percent of the wage gap remains unexplained even when accounting for factors like race, region, unionization status, education, occupation, industry, and work experience.

Discrimination is thought to be a major cause of this unexplained gap.

2. The lifetime wage gap per woman in Hawai'i is c.\$305,600 over a

40-year career. The problem of this gender wage gap is definitely compounded in Hawai'i by our high cost of living. These burdens make it very difficult for women to, for example, start a business, buy a home, pursue further education or even save for retirement. As importantly economic insecurity also makes it more difficult for women in Hawai'i to leave situations of domestic violence.

3. While passage of Act 108 in 2018, effective January 1, 2019 was a step towards ensuring pay equity, this bill would provide stronger equal pay protection, addressing the gender pay gap in Hawaii in the following ways:

A. Amend the list of protected classes under Hawaii's equal pay statute to make the protections afforded by this section consistent;

B. Provide pay transparency by requiring employers to make salary range information available to employees and job candidates;

C. Prohibit using an agreement to a lesser wage as a defense;

D. Clarify the factors that can be used by employers to justify differences in compensation based on seniority, merit, or other non-discriminatory purposes; and

E. Update the term "equal work" to "substantially similar work."

4. Moreover, it would help businesses recruit and retain employees, and potentially improve employee morale: workers would stay longer and be more productive, when working for companies which treat them with dignity. Whereas pay inequality decreases worker attendance, cooperation, and output.

5. We completely **adopt and support the discussion of the HCRC and its suggested amendments**, dated 2/7/19, to wit:

DISCUSSION AND RECOMMENDATIONS

HRS § 378-2(a)(1) already prohibits discrimination in compensation based on race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status. If the legislature amends § 378-2.3 to add the protected bases in addition to “sex,” the HCRC requests an amendment to Section 1 of the bill, to add language identical to that included in Section 1 of the 2005 Act 35, expressly stating: *“It is not the intent of the legislature to affect or diminish the existing, broader protections provided under part I of chapter 378, Hawaii Revised Statutes.”*

The other proposed amendments to HRS § 378-2.3, if enacted, will create relevant differences between the state equal pay statute and the federal EPA. Those differences and the legislature’s statement of its legislative intent will effectively preclude the importation and adoption of restrictive interpretations of the federal EPA.

Enactment of the existing HRS § 378-2.3(b) prohibition against retaliation against employees for disclosing, discussing, or inquiring, or aiding or abetting or encouraging the exercise of rights under the statute, was an important step toward the kind of transparency that will serve to facilitate achievement of pay equity. The proposed amendment of HRS § 378-2.4 to require employer posting and disclosure of pay information and ranges is intended to provide additional transparency. In the absence of such transparency, it is difficult for applicants and employees to have knowledge and evidence of equal pay violations.

SUGGESTED AMENDMENTS

Section 3 of the bill amends HRS § 378-2.4 to add new subsection (g) and (h), amending HRS § 378-2.4 to provide clarification of when an equal pay law violation occurs, and to broadly define “compensation.” The proposed amendments are as follows:

In subsection (h) The reference to “this section” should be amended to apply to “this section and section 378-2.3.” (but not to the entirety of chapter 378, part I).

Delete “upon reasonable request” in subsection (d) because there is no definition, and the proposed bill requires disclosure of amounts.

Subsection (f) calls for pay transparency, but would also require job reposting, and should be deleted, after the word “job listing.”

Types of compensation is already very broad, and a suggested amendment is to add “housing.” The changes are shown below.

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

(f) An employer shall disclose an hourly rate or salary range in all job listings [and shall select a salary within the posted range or, if necessary, republish

each job listing with an adjusted range before selecting an hourly pay rate or salary for a prospective employee].

(g) An unlawful employment practice is in violation of this section and section 3782.3 when:

- (1) a discriminatory compensation decision or other practice is adopted;
- (2) an individual becomes subject to the decision or practice; or
- (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid.

(h) For the purposes of this section and section 378-2.3, the meaning of “compensation” is to be construed broadly, to include such items as, but not limited to, employee expense accounts, use of a vehicle, housing, travel budgets, other cost reimbursements, paid vacation or sick leave, sabbatical benefits, endowed chairs, insurance, stock options, pension contributions, and other employee benefits.

HB-1192-HD-1

Submitted on: 2/23/2019 8:10:13 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Midwives Alliance of Hawaii	Midwives Alliance of Hawaii	Support	No

Comments:

We strongly support HB1192 HD1 as it will help women and families. Eliminating gender pay gap allows for working mothers to have more money for food, childcare and rent. Further, this bill can help employers recruit and retain employees and potentially improve employee morale.

We urge you to pass this bill and thank you for the opportunity to testify.

HB-1192-HD-1

Submitted on: 2/24/2019 9:01:30 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Darlene Ewan	Aloha State Association of the Deaf	Support	No

Comments:

Aloha State Association of the Deaf supports the bill. Deaf, Deaf-Blind, and hard of hearing women are likely to experience wage discrimination. This bill will give more support for them to be paid fairly.

Mahalo,

Darlene Ewan

President

HB-1192-HD-1

Submitted on: 2/23/2019 10:05:19 AM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Betty Sestak	AAUW	Support	No

Comments:

HB-1192-HD-1

Submitted on: 2/25/2019 1:59:32 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



O'ahu County Democrats
oahudemocrats.org



Aloha Chair Lee, Vice Chair San Buenaventura, and Members of the Judiciary Committee,

RE: HB 1192 HD1, Relating to Equal Pay

I write in support of House Bill 1192, House Draft 1. This bill provides for equal pay for women and clarity in our state non-discrimination statutes.

The O'ahu County Democrats Platform notes that “[w]e believe in the equality of women.” Indeed, we are committed to the abolishment of *de jure* discrimination and unequal pay for people along *ascribed* (inherited or otherwise non-chosen) individual traits, including gender. We promote *equity in diversity*, and equality before the law. Equal opportunity is sacred in our civic culture, as a relatively free people who have been at the forefront of modern human emancipation.

As the party of the people, the Oahu County Democrats strongly support our elected officials' efforts to advance women's rights and restore disadvantaged peoples to true equality in society. Again, I write in support of this measure.

I thank Representative Johanson for working towards human equality, and for advancing the well-being of working women. Members, please vote 'aye' on HB1192 HD1.

Respectfully,

Dylan P. Armstrong, Vice Chair

O'ahu County Committee, O'ahu County Democrats



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Tuesday, February 26, 2019 at 2:05 P.M.
Conference Room 325, State Capitol**

LATE

RE: HB 1192 HD1, RELATING TO EQUAL PAY

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") supports equal pay, however, the Chamber **does not support** HB 1192 HD1, which would impose overly-burdensome regulation upon business owners in the name of achieving equal pay.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While the Chamber supports equal pay, the Chamber is concerned with HB1192 HD1 for the following reasons:

Existing Law

It is already against the law for an employer to discriminate in setting employee wages based on gender. At the state level we have the Equal Pay Law, which clearly states that no employer shall discriminate based on gender when setting wages. At the federal level, the Equal Pay Act says that employers must pay equal wages to women and men in the same establishment for performing substantially equal work.

In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, which extended the statute of limitations for filing an equal pay lawsuit. We believe these laws already cover the issue of gender wage discrimination.

No Due Process for Employers

We disagree and oppose the presumption that the employer is guilty of wage discrimination, and puts the burden of proof on them to prove their innocence. The bill further restricts Hawaii's Equal Pay Law that limits "bona fide" factors for wage differentials to a



seniority system, a merit system, or production measures. This ties the hands of the employers in any legal flexibility in compensation.

This section could create many frivolous lawsuits against employers. Lawsuits (threatened or filed) have a substantial impact on small business owners. We have heard story after story of small business owners spending countless hours and sometimes significant sums of money to settle, defend or work to prevent a lawsuit.

Burdensome Disclosure of Wage Ranges

This bill would require business owners to provide to job candidates, at the time of hiring and on an annual basis, wage ranges for each employee's each job title. However, this bill does not provide clear definitions of several terms in Section 3. This proposed requirement would add a considerable administrative burden to all businesses, especially small businesses. It also requires that employers disclose this information for "substantially similar" positions, although in many cases, positions do not have clear objective, comparable measurements.

This bill would also require employers to repost a job listing with an updated wage range, if at any time the proposed hourly pay rate or salary does not match the previously posted range. As prospective employees often negotiate their salaries, this requirement could result in added cost to the employer and lengthen the hiring process.

The Chamber is also concerned that the disclosure of all pay rates in job listings encroaches on an employers' confidential pay information. For the reasons listed above, this bill could result in expensive and protracted litigation.

While the Chamber supports closing the gender pay gap, at this time, we ask that HB1192 HD1 bill be deferred. Thank you for the opportunity to testify.

HB-1192-HD-1

Submitted on: 2/25/2019 2:36:06 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Dodson	Ewa by Gentry Community Association	Oppose	No

Comments:

The Association believes in the concept of equal pay for equal work and that there should not be a pay gap based on a person's race, gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, etc. However, a law providing equal pay for "substantially similar" work prevents employers from a measurable standard of "work quality" for pay by eliminating incentives, adjustments for the amount and level of education, incentives for earned certifications and designations, is unworkably vague and subjective - and will ultimately be forced to the courts to determine a definition for "substantially similar" work in each marketplace.

Employers will be required to disclose pay rates for existing employees to anyone, including co-workers and the general public. This may also be construed by some as an invasion of privacy.

Please consider defining how educational degrees, certifications and designations for advanced training, on the job training, quality and exceptional work, and time in service can be clarified for the purposes of this bill.

Lastly, if passed in its current form, it will drive businesses and jobs away from the state of Hawaii. Especially hit, will be those businesses that can do business anywhere, but choose to be in Hawaii.



BIG ISLAND OCEAN GUIDES

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Rep. Tom Brower

Rep. Calvin K.Y. Say

Rep. Richard P. Creagan

Rep. Gregg Takayama

Rep. Nicole E. Lowen

Rep. Ryan I. Yamane

Rep. Angus L.K. McKelvey

Rep. Cynthia Thielen

Rep. Dee Morikawa

NOTICE OF HEARING

DATE: Tuesday, February 26, 2019

TIME: 2:05pm

PLACE: Conference Room 325

State Capitol

415 South Beretania Street

TESTIMONY OF FAIR WIND CRUISES IN OPPOSITION TO HB1192 Relating to Equal Pay:

Chair Lee, Vice Chair San Buenaventura, and Members of the JUD Committee:

My name is Jackie Moore-Andresen, PHR, Human Resources and Payroll Manager for Fair Wind Cruises, **speaking in Opposition of HB 1192:**

Fair Wind Cruises is a family operated Ocean Tourism business operating on the Island of Hawaii for over 48 years. Like Fair Wind, many in the Ocean Tourism sector are family businesses which are locally owned and operated. Many have been in business for several decades and are an important and valued part of our respective communities.

Fair Wind Supports the *intent* of HB 1192, however, as written it is not a viable practical solution.

We believe in the concept of equal pay for equal work and that there should not be a pay gap that is based on a person's race, sex, gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status. We also acknowledge that studies show a pay gap exists between men and women in Hawaii and the United States.

However, we do not believe creating a law that that requires employers to provide equal pay for "substantially similar" work is the solution to the pay gap that exists. Instead, for the following reasons such a law would be a compliance nightmare for employers and create more confusion and the potential for litigation.

Equal Pay Provisions

The requirement that employers pay equal compensation for "substantially similar" rather than "equal" work is unworkably vague, and will lead to excessive and unnecessary litigation. Specifically, the determination as to whether work is "substantially similar" based on a composite of skill, effort, and responsibility will allow claimants to compare themselves with others with different levels of education, or different certifications, or individuals working in different geographic locations and markets.

78-6775 MAKENAWAI ST., BOX A
KAILUA-KONA, HAWAII 96740
TELE: 808-322-2644
FAX: 808-322-2913

WWW.FAIR-WIND.COM

The way this bill is written, employers would be strictly liable for any instance where the pay of two employees may be deemed “substantially similar” but their pay is not necessarily equal.

Upon being sued for such a violation, the burden would be upon the employer to prove that the pay differential was in fact not discriminatory. This is especially troubling in light of the fact that the “substantially similar” provision is highly subjective and extremely vague.

Pay Disclosure Provisions

The requirement that employers, at the request of job applicants, provide “the pay scale for a position to an applicant applying for employment” will lead to confusion, and will substantially increase labor and administrative costs. It requires employers to affirmatively disclose what they may be willing to pay for services, even though a job applicant may be willing to accept a lesser rate. More importantly, the requirement that the employer “disclose the factors the employer considers in setting salary levels” is a trap for the unwary, and will lead to excessive litigation. Employers will need to list each and every factor that it could conceivably consider when making salary adjustments, because if the factor is not disclosed, ostensibly an employee could sue if the factor is at some point used to give wage increases to others.

The requirement that upon request, employers provide wage ranges for job that are “substantially similar” throughout the employer’s organization is unworkable, and clearly will lead to excessive and unnecessary litigation. Persons are likely to differ in what they consider to be “substantially similar” work.

For various reasons, there are likely to be many employees in the private sector who do not want their pay rates to be disclosed to the rest of their co-workers and the general public. Therefore, requiring employers to disclose the pay of their entire workforce to all employees and job applicants could be viewed as an invasion of privacy by many employees.

Sincerely,
Jackie Moore-Andresen, PHR
Human Resources & Payroll Manger
Fair Wind Cruises

HB-1192-HD-1

Submitted on: 2/25/2019 2:13:26 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Howard Kam, Jr.	TRUSTA, An Accountancy Corporation	Oppose	No

Comments:

We concur with the concept of equal pay for equal work and that federal and state laws already exist to support this concept.

We oppose this bill and the senate's accompanying bill since the good intentions are outweighed by the complexity and costs associated with compliance, if this bill was to become law. Also, the law would only serve to: (1) increase the costs of doing business in the state; (2) create unnecessary tension amongst employees, as the bill does not address level of knowledge, education or experience, etc.; (3) unnecessarily increase opportunities employment litigation; (4) reduce employment opportunities for the citizens of the state; and (5) encourage businesses to outsource more jobs out of state and overseas.

HB-1192-HD-1

Submitted on: 2/25/2019 3:59:10 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Nellis	Dole Food Co. Hawaii	Oppose	No

Comments:

Dole Food Co. Hawaii opposes HB1192 because the language of "substantially similar" work is very vague and will lead to argument and litigation. The disclosure of all employee's salary may also be considered an invasion of privacy.

Thank you very much.

Daniel Nellis, General Manager



LATE

To: Hawaii State House of Representatives Committee on Judiciary
Hearing Date/Time: Tues., Feb. 26, 2019, 2:05 p.m.
Place: Hawaii State Capitol, Rm. 325
Re: Testimony of Planned Parenthood of Hawaii in Support of H.B. 1192, HD1

Dear Chair Lee and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in support of H.B. 1192, HD1, which seeks to ensure pay equity.

PPVNH supports equal pay policies that bring women’s earnings in line with men’s earnings. Women have higher rates of economic insecurity than men do, and their lower wages hurt not only themselves but also their families who rely on those earnings for all or part of their income. Women are also more likely to rely on public benefits like Medicaid, the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), and housing assistance. This economic insecurity is even more common for women of color.

Closing the wage gap requires laws like H.B. 1192 that address discrimination and pay disparities in the workplace. Employers pay women less from the moment of hire and are more likely to deny them promotions because of the presumption that they will have children and thus commit less time and dedication to their jobs.

If women do get pregnant or take on caregiving responsibilities, they sometimes lose income because of overt discrimination based on these stereotypes. They also lose pay when they are deprived of opportunities to advance to higher paid jobs or are pushed out of work altogether because employers do not accommodate needs that may arise for women as a result of motherhood (like the need to pump breast milk at work or take time off to care for a sick child).

Reducing pay disparities will improve the lives of women and their families and help to relieve the economic burden of women’s health care and family planning. Please pass H.B. 1192 in support of Hawaii’s working women and families.

Thank you for this opportunity to testify in support of this important measure.

Sincerely,

Laurie Field
Hawaii State Director

HB-1192-HD-1

Submitted on: 2/23/2019 7:46:24 AM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Aloha,

Please support HB1192 HD1.

Women are unaware that they may be paid significantly less than their male peers. In 2017 the median annual earnings for men in Hawaii was \$51,594 compared to \$41,664 for women. In 2017 women in Hawaii were paid 81% of what their male peers were paid. Hawaii's 2017 pay ratio ranked 23rd out of all states and the District of Columbia (Source: [AAUW Simple Truth about the Gender Pay Gap - Fall 2018 Edition](#)). Close to 52,000 family households in Hawaii are headed by women. 17% of these households have incomes that fall below the poverty level. If the pay gap were eliminated, a working woman in Hawaii would have enough money for 51 more weeks of food for her family.

Hawaii's Equal Pay Act moves towards ending the pay ratio disparity between men and women. Since the beginning of 2019, Act 108 prohibits employers from inquiring about a job applicant's salary history. Building upon Act 108, Representative Aaron Johanson has introduced House Bill (HB) 1192 and Senator Brian Taniguchi has introduced Senate Bill (SB) 1375. If passed and signed by the governor, Hawaii's law will be stronger than the Federal Equal Pay Act. The law will enable employees to talk openly about their salaries without retaliation and increase salary transparency by requiring employers to disclose salary ranges to current and prospective employees.

Employers benefit from increased salary transparency. Salary transparency can help employers control their pay expenses and ensure pay equity among their employees. By being up front about wages before a job interview, employers save time by not interviewing job candidates who will eventually turn down the job offer. It is critical for employers to have rational explanations for the salary rate for all employees. Transparent salary ranges that are clearly defined promote gender pay equity for all.

Mahalo,

Caroline Kunitake

HB-1192-HD-1

Submitted on: 2/23/2019 8:30:07 AM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Annette Barr	Individual	Support	No

Comments:

I am in support of HB1192 as we need Hawaii to be a strong supporter of equal pay for all. Common sense tells us that treating all workers with fairness and dignity, as in valuing each and every employee, makes for better employees, a better workplace and a more successful business. Salary transparency and working towards equal pay for equal work are honorable and worthwhile goals.

HB-1192-HD-1

Submitted on: 2/23/2019 8:06:20 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments:

I strongly support HB1192 HD1 as it will help women and families. Eliminating gender pay gap allows for working mothers to have more money for food, childcare and rent. Further, this bill can help employers recruit and retain employees and potentially improve employee morale.

I urge you to pass this bill and thank you for the opportunity to testify.

HB-1192-HD-1

Submitted on: 2/24/2019 2:12:46 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Comments:

February 23, 2019

To: Hawaii State House Committee on Judiciary
Hearing Date/Time: February 26, 2019, 2:05 PM
Place: Hawaii State Capitol, Room 325
Re: Testimony in SUPPORT OF HB1192, HD1

Dear Representative Lee, Chair, Representative Buenaventura, Vice-Chair and Members of the Committee,

The passage of Act 108 in the 2018 legislative session was an important step in closing the pay gap. But, as the gender pay gap for women in Hawaii has widened from 84% of men's earnings in 2015 to 81% in 2017, HB1192, HD1 is needed to clarify provisions of Act 108 and ensure that the pay disparity between men and women diminishes.

HB1192 would provide strong equal pay protection:

- By amending the list of protected classes, the bill takes into account that native Hawaiian and other Pacific islander women earn only sixty-two per cent of white male earnings nationally, and Hispanic women earn even less.
- It encourage pay equity by by requiring employers to make salary range information available to employees and job candidates. Sanctions against discussing salaries make it possible for employers to hide this discrimination from female employees. Women are greatly disadvantaged when disparities in salaries are hidden
- It clarifies the factors that can be used by employers to justify differences in compensation.
- And, by updating the term "equal work" to "substantially similar work," it brings the language of our law into alignment with the more accurate term used in many other states.

Please pass HB1192 and help women in Hawaii to achieve economic equity in employment.

Thank you for the opportunity to testify.

Janet Morse
AAUW Hawaii member

HB-1192-HD-1

Submitted on: 2/25/2019 10:36:10 AM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	Individual	Support	No

Comments:

Please pass this bill which is an important step in decreasing the gender pay gap.

Mahalo,

Susan J Wurtzburg, Ph.D

HB-1192-HD-1

Submitted on: 2/25/2019 3:25:15 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael L Inouye	Individual	Support	No

Comments:

LATE

HB-1192-HD-1

Submitted on: 2/25/2019 9:43:31 PM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Makana Paris	Individual	Support	No

Comments:

LATE

HB-1192-HD-1

Submitted on: 2/26/2019 8:26:32 AM

Testimony for JUD on 2/26/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Noelle Wright	Individual	Support	No

Comments: