



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

April 3, 2019  
Rm. 211, 10:00 a.m.

To: Hon. Karl Rhoads, Chair  
Members of the Senate Committee on Judiciary

Hon. Donovan M. Dela Cruz, Chair  
Members of the Senate Committee on Ways and Means

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

Re: H.B. No. 1192, H.D. 2, S.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (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.

**HCRC supports H.B. No. 1192, H.D. 2, S.D. 1.**

H.B. No.1192, H.D. 2, S.D. 1, if enacted, will amend HRS §§ 378-2.3 and 378-2.4, the Hawai‘i state law equal pay law 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.

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 S.D. 1 at page 2, paragraph 1, to add purpose 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.”**

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 S.D. 1 at page 2, paragraph 1, to add purpose language identical to that included in Section 1 of the 2005 Act 35, to read:**

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

HCRC supports H.B. No. 1192, H.D. 2, S.D. 1.





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

Prepared for the Senate Committees on Judiciary and Ways and Means

In Support of HB1192 HD2, SD1  
Wednesday, April 3, 2019, at 10:00 a.m. in Room 211

Dear Honorable Members,

The Hawai'i State Commission on the Status of Women writes in **support** of HB1192 HD1, SD1, 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 HD2, SD1.

Sincerely,

Khara Jabola-Carolus



To: Hawaii State Senate Committees on Judiciary and Ways and Means  
Hearing Date/Time: Tues., Apr. 2, 2019, 10:00 a.m.  
Place: Hawaii State Capitol, Rm. 016  
Re: Testimony of Planned Parenthood of Hawaii in Support of H.B. 1192, HD2, SD1

Dear Chairs Rhoads and Dela Cruz and Members of the Committees,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in support of H.B. 1192, HD2, SD1, 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-SD-1**

Submitted on: 3/29/2019 6:02:45 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB1192 HD 2 SD 1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.  
Chair  
LGBT Caucus of the Democratic Party of Hawaii

**HB-1192-SD-1**

Submitted on: 3/29/2019 7:40:25 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pride Work HI	Testifying for Pride at Work Hawaii	Support	Yes

Comments:

Aloha Representatives,

The Pride at Work Hawaii, an affiliate of Hawaii State AFL-CIO, supports the passage of HB 1192 HD 2 SD 1.

Mahalo for your consideration and for the opportunity to testify in STRONG support of HB 1192 HD 2 SD 1.

Mahalo,

Pride at Work - Hawaii

**HB-1192-SD-1**

Submitted on: 3/31/2019 7:16:16 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Betty Sestak	Testifying for AAUW Windward	Support	No

Comments:

strong support



AMERICANS FOR DEMOCRATIC ACTION

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OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Ken Farm	Stephen O'Harrow	P.O. Box 23404
Alan Burdick, Vice President	Guy Archer	Chuck Huxel	Doug Pyle	Honolulu
Marsha Schweitzer, Treasurer	Juliet Begley	Jan Lubin		Hawai'i 96823
Dylan Armstrong, Secretary	Gloria Borland	Jenny Nomura		

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March 31, 2019

TO: Honorable Chairs Rhoads/Dela Cruz & JDC/WAM Committee Members

RE: HB 1192 HD2 SD1 Relating to Equal Pay

Support for hearing on April 3

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 1192 HD2 SD1 as we support equal pay for equal work. We were pleased to read the Labor Committee's report: "pay disparity still persists between men and women in Hawaii who do similar work. Hawaii ranks twenty-third in income equality out of all states and the District of Columbia, according to the most recent census bureau. Your Committee further finds that the most extreme disparity in pay exists among Native Hawaiian and other Pacific Islander women who earn only sixty-two percent of white male earnings nationally. This measure clarifies the classes protected from pay discrimination, and provides for wage transparency, which will get Hawaii closer to ending pay disparity in the workplace."

Thank you for your favorable consideration.

Sincerely,

John Bickel President





1050 Bishop St. PMB 235 | Honolulu, HI 96813  
P: 808-533-1292 | e: info@hawaiiifood.com

#### Executive Officers

**Toby Taniguchi**, KTA Superstores, *Chair*  
**Joe Carter**, Coca-Cola Bottling of Hawaii, *Vice Chair*  
**Charlie Gustafson**, Tamura Super Market, *Secretary/Treas.*  
**Lauren Zirbel**, HFIA, *Executive Director*  
**Beau Oshiro**, C&S Wholesale Grocers, *Past Chair*  
**Stan Brown**, Acosta Sales & Marketing, *Advisor*  
**Paul Kosasa**, ABC Stores, *Advisor*  
**Barry Taniguchi**, KTA Superstores, *Advisor*  
**Derek Kurisu**, KTA Superstores, *Advisor*

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TO:

Committee on Judiciary and Committee on Ways and Means  
Senator Karl Rhoads and Senator Donovan M. Dela Cruz, Chairs  
Senator Glenn Wakai and Gilbert S.C. Keith-Agaran, Vice Chairs

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: April 4, 2019  
TIME: 10am  
PLACE: Conference Room 224

RE: HB1192 HD2 SD1 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 exact specifications of a job depend a great deal on the individual doing the job. The language “substantially similar” is vague and different people may have different ideas about which jobs within a business are substantially similar. It may not be possible for employers to provide accurate wage ranges to employees as mandate in Section 3 of this measure.

We thank you for the opportunity to testify.

Wednesday, April 3, 2019 at 10:00am  
Conference Room 211

**Senate Committee on Judiciary**

To: Senator Karl Rhoads, Chair  
Senator Glenn Wakai, Vice Chair

**Senate Committee on Ways and Means**

To: Senator Donovan Dela Cruz, Chair  
Senator Gilbert Keith-Agaran, Vice Chair

From: Gail Lerch  
EVP, Human Resources and General Services

**Re: Testimony in Opposition to HB 1192, HD2, SD1  
Relating To Equal Pay**

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My name is Gail Lerch, Executive Vice President, Human Resources and General Services at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

**I write in opposition to HB 1192, HD2, SD1** that conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination, clarifies allowable justifications for compensation differentials and remedies for pay disparity, and requires employers to disclose wage ranges to employees and prospective employees.

HPH supports equal pay and prohibitions against wage discrimination. Our organization takes deliberate steps to ensure that our employees are not subject to wage or position discrimination based on race, gender, age, sexual orientation and all protected categories. Hawai'i Pacific Health is proud of our record of promoting women into leadership as well as supervisory positions within our hospital system.

While we support equal pay and prohibitions against wage discrimination, we oppose the requirement in HB 1192, HD2, SD1 that employers must disclose wage ranges and the factors considered in setting salary levels to prospective employees, and then annually provide that information upon request. The requirement will create confusion within the workforce, and will substantially increase labor and administrative costs to remain compliant. The situation would also be exacerbated by the language in the bill that



mandates the disclosure of wage information for “substantially similar” positions. In many instances, especially within the health care field, positions do not have clear objective comparable measurements.

The salary disclosure requirement will also create morale issues among employees. There are a number of factors in determining pay differentials between employees that are not based on gender or race based factors. Salary differentials between employees within and across different organizations are nuanced and difficult to capture in a simple reporting of salary ranges by job title. Requiring employers to disclose the pay of their entire workforce to all employees and job applicants could also be viewed as an invasion of privacy by many employees. For various reasons, there are likely to be many employees in the organization who do not want their pay rates to be disclosed to other co-workers and between other employers who might be competing for the same pool of applicants. Therefore our concern on the effect release of such information through a survey result could result in serious morale issues experienced by employees.

We are also concerned that this bill will undermine the purpose and intent of the Hawai'i Employer's Council (HEC) Annual Salary Survey which HPH and other industry employers currently utilize to ensure that salary ranges remain competitive as well as non-discriminatory. The survey results from the HEC Annual Salary Survey remain de-identified to protect industry participants from specific competitor salary rates as well as to protect individual privacy interest of all of our employers. The current process has broad industry participation, is standardized and is a useful tool that employers currently use to remain competitive while maintaining the privacy of our employees. Should HB 1192 become law, the confidentiality benefits between industry competitors and employee privacy will be compromised.

Finally, HB 1192 may result in the unintended effect of compressing wages *downward* within a particular industry. Organizations paying above average wages for certain positions may over time reduce its salary rate to the industry mean for “substantially similar” position to the detriment of employees. There are more efficient legal remedies to address discrimination that currently exist that do not have the additional negative unintended consequences which HB 1192 will introduce to both employers and employees.

Thank you for the opportunity to testify.



# HAWAII APPLESEED

## CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
In Support of HB 1192 HD2 SD1 – Relating to Equal Pay  
Senate Committees on Judiciary and on Ways and Means  
Wednesday, April 3, 2019, 10:00 AM, conference room 211

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Dear Chairs Rhoads and Dela Cruz, Vice Chairs Wakai and Keith-Agaran, and members of the Committees:

Thank you for the opportunity to provide testimony in **SUPPORT** of **HB 1192 HD2 SD1**. 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 this year.

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.

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.

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*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.*



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON JUDICIARY

COMMITTEE ON WAYS AND MEANS

HB1192 RELATING TO EQUAL PAY

**TESTIMONY**

Barbara J. Service, Legislative Committee, League of Women Voters of Hawaii

Chairs Rhoads and Dela Cruz, Vice Chairs Wakai and Keith-Agaran and Committee Members:

**The League of Women Voters of Hawaii supports HB1192 which confirms statutory prohibitions against wage discrimination in addition to other prohibitions on employment discrimination. It also clarifies allowable justification for compensation differentials and remedies for pay disparity and requires employers to disclose wage ranges to employees and prospective employees.**

**Hawaii can be a leader in the field of pay equity, much as it has been in civil rights. Unfortunately, the gender gap has worsened in Hawaii; the median annual earnings for women were 84% in 2015 but dropped to 81% two years later. Hawaii is considered to have only moderate equal pay protection, while seven other states have strong equal pay protection. This bill would strengthen equal pay protections enacted through Act 108 in 2018.**

**There are several purposes of the bill including amending the list of protected classes to make protections consistent with the state statute that prohibits employment discrimination, providing pay transparency by require employers to make salary range information available to employees and job candidates and clarifying factors that can be used by employers to justify differences in compensation based on seniority, merit and other non-discriminatory purposes.**

**Millennials are attracted to jobs which offer salary transparency and pay equity and workers stay longer in jobs where they are treated with dignity. The gender pay gap in Hawaii has increased and is even worse among Native Hawaiian and Pacific Islander women. Many Hawaii households are headed by women, thus this inequity penalizes children.**

**Please pass HB 1192 and thank you for the opportunity to provide testimony.**

**HB-1192-SD-1**

Submitted on: 4/2/2019 2:00:20 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Testifying for Hawaii Women's Coalition	Support	No

Comments:



**Testimony to the Senate Committees on Judiciary and Ways & Means  
Wednesday, April 3, 2019 at 10:00 A.M.  
Conference Room 211, State Capitol**

**RE: HB 1192 HD2 SD1, RELATING TO EQUAL PAY**

Chairs Rhoads and Dela Cruz, Vice Chairs Wakai and Keith-Agaran, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") supports equal pay, however, the Chamber **does not support** HB 1192 HD2 SD1, which would impose overly-burdensome regulation upon business owners in the name of achieving equal pay.

Additionally, the Chamber would recommend the following amendment be added at the end of Section 3, paragraph (f): “; **provided that this subsection shall not apply to discussion of employee wages if knowledge of the wages stems from human resources, payroll, or legal professional responsibilities in the workplace.**” This amendment would help to prevent the inappropriate release of payroll information and was included in the previous HD2 version of the bill, but was not included in the SD1 draft.

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 HD2 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.



# Chamber of Commerce HAWAII

*The Voice of Business*

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, due to the concerns listed above, we cannot support this bill at this time and respectfully ask that HB 1192 HD2 SD1 be deferred. Thank you for the opportunity to testify.

# Island Plastic Bags Inc.

TO: Chair Karl Rhoads; Vice Chair Glenn Wakai; and Committee

Chair Dela Cruz; Vice Chair Keith-Agaran; and Committee

FROM: Adrian Hong, President of Island Plastic Bags, Inc.

RE: HB 1192 HD 2 SD 1 RELATING TO EQUAL PAY

POSITION: OPPOSE

Thank you for the opportunity to submit testimony in opposition of HB 1192 HD 2 SD 1. My name is Adrian Hong and I am the president of Island Plastic Bags Inc. (IPB), a second-generation, family business in Halawa Valley that manufactures plastic trash liners and food grade bags. If passed HB 1192 HD 2 SD1 would impose overly-burdensome regulation upon business owners in the name of achieving equal pay.

While IPB supports equal pay, the company is concerned with HB1192 HD2 SD 1 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. IPB believes these laws already cover the issue of gender wage discrimination.

**No Due Process for Employers.** IPB disagrees and opposes 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.

**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

# Island Plastic Bags Inc.

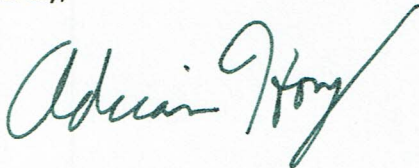
businesses. It also requires that employers disclose this information for “substantially similar” positions, although in many cases, positions do not have clear objective, comparable measurements.

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.

IPB 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.

Due to the concerns listed above, IPB cannot support this bill at this time and respectfully ask that HB1192 HD2 be deferred. Thank you again for the opportunity to testify. Should you have any questions or comments about my testimony you can contact me by email at [ahong@islandplasticbags.com](mailto:ahong@islandplasticbags.com) or by phone at 808-484-4046.

Sincerely,



Adrian K. Hong, CPA\*

President

Island Plastic Bags, Inc.

[www.islandplasticbags.com](http://www.islandplasticbags.com)

Email: [ahong@islandplasticbags.com](mailto:ahong@islandplasticbags.com) | Phone: 808-484-4046 | Fax: 808-488-8505

\*Not in public practice





**TESTIMONY TO THE SENATE COMMITTEES ON JUDICIARY AND WAYS AND MEANS  
State Capitol, Conference Room 211  
415 South Beretania Street  
10:00 am**

April 3, 2019

RE: HB 1192 HD2 SD1 – RELATING TO EQUAL PAY

Chairs Rhoads & Dela Cruz, Vice-Chairs Wakai & Keith-Agaran, and members of the committees:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in **opposition** to HB 1192 HD2 SD1, which conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination, clarifies allowable justifications for compensation differentials and remedies for pay disparity, and requires employers to disclose wage ranges to employees and prospective employees.

While we understand the intent of this bill, we believe that it is unnecessary and will cause an undue burden on already-struggling businesses in Hawaii. There are already numerous federal laws in place to protect employees from wage disparity. Further, it is a business decision based upon merit, qualifications, and the position's established criteria that determines the rate of pay for a prospective employee.

Thank you for the opportunity to express our views on this matter.

**HB-1192-SD-1**

Submitted on: 4/2/2019 9:48:54 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mandy Fernandes	Testifying for ACLU of Hawaii	Support	Yes

Comments:

**HB-1192-SD-1**

Submitted on: 4/2/2019 10:04:06 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:

The O`ahu County Democrats Legislative Priorities Committee supports HB1192, HD2, SD1, because there is extreme disparity in pay among Native Hawaiian and other Pacific Islander women who earn only sixty-two percent of white male earnings nationally. As such, HB1192, HD2, SD1, will clarify the classes protected from pay discrimination and provide for wage transparency, which will help end pay disparity in the workplace.

Mahalo nui loa.

Melodie Aduja

Chair, OCDLPC

**HB-1192-SD-1**

Submitted on: 4/1/2019 8:07:51 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Midwives Alliance of Hawaii	Testifying for Midwives Alliance of Hawaii	Support	No

Comments:

We strongly support this bill and request JDC/WAM to pass HB1192 HD2 SD1.



**LATE**

March 24, 2019

From: Hannah Liebreich , Title IX Specialist, Public Policy Committee, AAUW Hawaii  
Younghee Overly, Public Policy Chair, AAUW Hawaii

To: Hawaii State Senate Committee on Judiciary  
Hearing Date/Time: Thursday March 28, 2019 9:45AM  
Place: Hawaii State Capitol, Rm. 016  
Re: Testimony in SUPPORT of HB483 HD2 SD1

Dear Chair Rhoads, Vice-Chair Wakai, and Members of the Committee,

Thank you for this opportunity to testify in in strong support of HB483 HD2 SD1 with a request for amendment. HB483 HD2 extends the deadline for the legislative reference bureau to complete the study on Title IX directed by Act 110, Session Laws of Hawaii 2018, from 20 days before the start of the 2019 Hawaii legislative session to August 1, 2019. It also incorporates federal Title IX law regarding social groups and youth services organization, and same-sex living facilities into Act 110.

With recent dramatic changes to US DOE's Title IX guidance and potential change to the Title IX regulation, we need this study which would provide analysis of Title IX enforcement practices and procedures on the federal level and other jurisdictions, and recommendations on the foregoing issues, including a proposed legislation. The findings and recommendations from the study are critical input to propose a Title IX bill for the 2020 Hawaii state legislative session.

*Since Act 110 becomes effective January 1, 2020 before we can work on the Title IX bill based on the LRB study, we also want to ensure Act 110 is in accordance with federal Title IX regulation which allows schools to administer or assist in administering specific sex-restricted scholarships, fellowship, or other forms of financial assistance through a domestic or foreign will, trust, bequest, or similar instrument, **but require** that the overall effect of such sex-restricted financial assistance not discriminate on the basis of sex (Federal Regulation Volume 65, Page 52872, Sec. 430(b)) **as it reads January 1, 2019**. Please amend Act 110, SLH 2018, as such to avoid unintended consequences.*

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.

Thank you for your time and consideration regarding this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to be "Hannah Liebreich".

*Hannah Liebreich*



*Fujiwara & Rosenbaum, LLC*  
1100 Alakea Street, FL 20, STE B  
Honolulu, Hawaii 96813

**LATE**

April 3, 2019  
Rm. 211 10:00 a.m.

To: Hon. Karl Rhoads, Chair  
Members of the Senate Committee on Judiciary

Hon. Donovan M. Dela Cruz, Chair  
Members of the Senate Committee on Ways and Means

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

Re: **H.B. 1192 H.D.2 S.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.2 S.D.1 would amend H.R.S. §§ 378-2.3 and 378-2.4, the Hawai'i state law regarding equal pay law.

Unfortunately, our state equal pay law was originally modeled on the federal Equal Pay Act. We agree with the Hawai'i Civil Rights Commission that the proposed amendments to HRS § 378-2.3, if enacted, will definitely create

relevant differences between the state equal pay statute and the federal EPA. Those differences and the legislature’s statement of its legislative intent, as described below on page 4, will effectively preclude the importation and adoption of the restrictive interpretations of the federal EPA.

**Our law firm strongly supports H.B. No. 1192 H.D.2 S.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 with 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. One of the most crucial changes is to change the prohibition in HRS 378-2.3 against discrimination in compensation from **“equal work”** to a prohibition against discrimination in compensation for **“substantially similar work”**. **The reason “substantially similar work” is crucial is that by using the term “equal work” employers get around pay inequities by merely changing just one job function, which, in my experience, is usually bogus.**

4. 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 and is an important step toward the kind of transparency that will serve to facilitate achievement of pay equity. Now, for example, a female employee can be assured that she is making less than her male co-worker once she knows without a doubt from the required employer posting and/or disclosure of pay information and ranges that there is a clear pay differential for substantially similar work. Without such transparency, it is near impossible for applicants and very difficult for current employees to have knowledge and evidence of equal pay violations.

5. This bill would provide **stronger equal pay protection for all protected classes**, by making the protections afforded by this section consistent with our current civil rights law under Chapter 378. Consequently, women who are in other discriminated groups would be further protected by these additional classes. *Lam v. UH*

6. As to the employer defenses, this bill
  - a. Prohibits using an agreement to a lesser wage as a defense;
  - b. Prohibits curing an equal pay violation by reducing the wage rate of a higher-paid employee;
  - c. Clarifies the factors that can be used by employers to **justify differences** in compensation, such as a ***non-discriminatory*** senior system, ***provided that time spent on leave due to a pregnancy related condition or parental, family, or medical leave, shall not reduce seniority: a non-discriminatory*** merit system; and a system that ***objectively*** measures earnings by quantity or quality of production.
7. 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.**

**Amendments to the Bill.**

We are in agreement with the Hawai'i Civil Rights Commission's eight page analysis of this bill, comparing the less protective federal Equal Pay Act and Title VII to our equal pay rights under Chapter 378. We would also like to emphasize that if the legislature amends § 378-2.3 to add the protected bases in addition to "sex," like the HCRC, we also request an amendment to Section 1 of the S.D. 1 at page 2, paragraph 1, to add purpose language identical to that included in Section 1 of the 2005 Act 35, to read:

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





**LATE**

Testimony to the  
Senate Committee on Judiciary  
and the  
Senate Committee on Ways and Means

April 3, 2019  
10:00 a.m.  
State Capitol - Conference Room 211

RE: HB 1192, HD2, SD1, Relating to Equal Pay

Aloha Chairs Rhoads and Dela Cruz, Vice Chairs Wakai and Keith-Agaran, and members of the committee:

On behalf of the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”), we are writing in opposition to HB 1192, HD2, SD1, relating to equal pay. SHRM Hawaii has a longstanding position of support for initiatives that promote flexibility between employer and employee, rather than requirements that do not take into account unique circumstances. While we strongly support equal pay for equal work, we believe that this bill does not fulfill its intended purpose. Expanding the Equal Pay Act by adding every protected class creates ambiguity over whether, for example, an older employee with more experience level may be paid more than a younger employer with less experience. In addition, clarity is needed regarding what “substantially similar” means in this context. By shifting the responsibility to the employer to explain why there is a pay differential, there could be unintended exposure to liability for employers that is overly broad and very difficult to limit. We oppose this measure.

The mission of SHRM Hawaii is to advance the Human Resource profession’s capacity to drive workplace excellence within business, education, government, and communities in the State of Hawaii. We serve our professionals through building knowledge, expanding experiences, facilitating the development of innovative ideas, and exchanging best practices for success to serve human resource (HR) professionals and advance the human resource profession.

SHRM Hawaii serves nearly 800 members statewide and provides comprehensive information and tools to human resource professionals to enable them to make informed decisions on behalf of both their organization and the employees. We believe that human resource management is a critical component to the success of every business as the HR professional is responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses’ most valuable asset: human capital. This is accomplished through a statewide effort to partner with and support our members, while still recognizing the individual needs of organizations on each island. We look forward to contributing positively to the development of sound public policy and continuing to serve as a resource to the legislature on matters related to labor and employment laws. Mahalo for the opportunity to testify.





To:  
Senator Donovan M. Dela Cruz  
Chair, Senate Committee on Ways and Means

Senator Karl Rhoads  
Chair, Senate Committee on the Judiciary

From:  
Zonta Club of Hilo, Legislative Advocacy Committee

April 3, 2019

**RE: Zonta Club of Hilo in SUPPORT of HB1192 Relating to the Equal Pay**

Aloha Senators Taniguchi and Ihara

Zonta International is a leading global organization of professionals empowering women worldwide through service and advocacy. Zonta International envisions a world in which women's rights are recognized as human rights and every woman is able to achieve her full potential. In such a world, women have access to all resources and are represented in decision making positions on an equal basis with men. Our membership includes both current and former small business owners in Hilo.

The Zonta club of Hilo would like to offer our support for **HB1192** that 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.

Taking this step toward greater pay equity the right thing to do. Passage of this legislation will make Hawaii the National leader in pay equity legislation.

The Zonta Club of Hilo supports **HB1192** and encourages you to pass this legislation in your committee.

Mahalo,  
Heather Kimball  
Zonta Club of Hilo Legislative Advocacy Committee



1654 South King Street  
Honolulu, Hawaii 96826-2097  
Telephone: (808) 941.0556  
Fax: (808) 945.0019  
Web site: [www.hcul.org](http://www.hcul.org)  
Email: [info@hcul.org](mailto:info@hcul.org)



Testimony to the Senate Committees on Judiciary, and Ways & Means  
Wednesday, April 3, 2019, 10:00 am  
Hawaii State Capitol, Room 211

Comments on HB 1192 HD2 SD1, Relating to Equal Pay

**LATE**

To: The Honorable Karl Rhoads & Donovan Dela Cruz, Chairs  
The Honorable Glenn Wakai & Gil Keith Agaran, Vice-Chairs  
Members of the Committees

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following comments on HB 1192 HD2 SD1.

This bill conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination, clarifies allowable justifications for compensation differentials and remedies for pay disparity, and requires employers to disclose wage ranges to employees and prospective employees.

While we understand the intent of this bill, we have concerns about the potential unintended consequences. The bill would cause another burden on businesses that are already struggling to do business in Hawaii, adding another layer of government oversight upon what the business can pay an employee. Further, while the intent of this bill is to protect employees from pay disparity, it may have the added effect of creating a difficult work environment, as employers are required to disclose pay ranges.

Thank you for the opportunity to provide comments.



*Eric W. Gill, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Godfrey Maeshiro, Senior Vice-President*

April 2, 2019

Committee on Ways and Means and Committee on Judiciary  
Hawaii State Senate

**LATE**

**Re: Testimony with comments on HB1192, HD2, SD1 relating to equal pay**

Aloha Chairs Dela Cruz and Rhoads, Vice-Chairs Keith-Agaran and Wakai and members of the Committees:

UNITE HERE Local 5 **supports** this bill as amended in its SD1 form. We believe this bill makes a significant incremental step toward ending discriminatory practices in the workplace. Given the significant forces at the national level pushing legislation in the opposite direction, it will be key to have strong anti-discrimination and equal pay policies codified in state law.

Thank you.

Hearing Date: Wednesday, April 3, 2019, 10 am, Room 211

To: Senate Committee on Judiciary  
Chair, Senator Brian Taniguchi

Senate Committee on Ways and Means  
Chair, Senator Donovan Dela Cruz

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

**Re: TESTIMONY IN SUPPORT OF HB 1192, HD2, SD1 –  
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, HD2, SD1 Relating to Equal Pay.**

This bill is another important step in achieving equal pay in Hawaii.

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.

Mahalo for allowing me to submit my testimony today.

*Jean Evans*



**HB-1192-SD-1**

Submitted on: 3/30/2019 1:53:44 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Kunitake	Individual	Support	No

Comments:

Aloha,

Please support HB1192 HD2 SD1.

Hawaii can be a leader in the field of pay equity, as Hawaii has led the way in civil rights.

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.

The bill's measures do succeed, with minimal cost or disruption to employers. 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.

Salary transparency and attempts at pay equity will attract millennials; will be more attractive in a competitive market.

Let's work together to support Equal Pay.

Mahalo,

Caroline Kunitake

April 1, 2019

To: Hawaii State House Committee on Judiciary and Ways & Means

Hearing Date/Time: April 3, 2019, 10:00 AM

Place: Hawaii State Capitol, Room 211

Re: Testimony in SUPPORT OF HB1192, HD2, SD1

Dear Senators Rhoads (Chair Judiciary) and Dele Cruz (Chair Ways & Means) and Members of the Committees,

The passage of Act 108 in the 2018 legislative session was an important step in closing the gender pay gap for women in Hawaii. This session we can provide even stronger equal pay protection and establish Hawaii as a leader in the field of pay equity with the passage of HB1192, with its amendments (HD2 and SD1).

- This legislation will provide strong equal pay protection by amending the list of protected classes to take 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 will encourage pay equity 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 will clarify 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 will bring 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-SD-1**

Submitted on: 3/31/2019 4:49:32 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
elizabeth hansen	Individual	Support	No

Comments:

Aloha Senators:

I do hope you support this bill. Hawaii can be a leader on equal pay issues. This bill measure can succeed with minimal cost or disruption to employers. Employees stay longer and are more productive when working for companies who treat them with dignity and equality.

Mahalo for you anticipated support.

Elizabeth Hansen,

Hakalau HI 96710

**HB-1192-SD-1**

Submitted on: 4/1/2019 10:11:30 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sarah	Individual	Support	No

Comments:

Thank you for providing me the opportunity to testify in support of HB1192 HD2 SD1.

With a Hawaii being an "at will" state in terms of employment, people are at a greater risk of being discriminated against without even knowing. I think in mandating that job listings include salary/wage ranges, along with job expectations this will provide a level of accountability to employers to stand by the amounts being publicly reported, and also provides employees documentation of what the expectation was and if there werent any applicable reasons for any discrepancies in pay, they would have a better chance of being heard.

I think people being able to openly talk about their salary/wage is also important for holding employers accountable for following laws regarding discrimination, and that should be maintained in the final bill. If people are open and able to talk about their income with one another, people will likely have more awareness of differences, and want answers as to why those differences exist, which will hopefully motivate employers to operate as the laws are written.

Thank you for taking the time to read my testimony, i am in support of HB1992 HD2 SB1

To: Hawaii State Senate Committee on Judiciary and Senate  
Committee on Ways and Means  
Hearing Date/Time: April 3, 2019 (10:00 am)  
Place: Hawaii State Capitol, Rm. 211  
Re: Testimony in support of HB1192 (relating to equal pay)

Dear Senator Karl Rhoads (Chair), Senator Donovan M. Dela Cruz (Chair) Senator Glenn Wakai (Vice Chair), Senator Gilbert S.C. Keith-Agaran and Committee Members,

I am grateful for this opportunity to testify in **strong support of HB1192 HD2 SD1 (relating to equal pay)**, which directly confronts the gender equity issue in Hawai'i employment wages. Over the years, there has been much rhetoric in the Hawai'i Capitol about women's rights and economic well-being, and this year, there is another opportunity to move these aspirations into action, and to promote greater fairness in salaries.

In terms of women's wage progress in Hawai'i, we are moving backwards, with gender equity becoming worse in this state. In 2017, the earnings ratio in Hawai'i was 81%, while in 2015, it was 84%.<sup>1</sup> Gender inequities are long-standing, and the results are onerous for families on the islands.

There are clear data showing the extent of the problem. Gender-based salary differentials are found across occupations, and continue through individuals' working lives, worsening with age.<sup>2</sup> The pay gap affects women's abilities to feed their families at the start of their careers, and their capacities to retire in comfort at age 65. All households in Hawai'i with a female family member in the workplace are negatively impacted.

In addition, economic data demonstrate that the pay gap will not be diminishing any time soon (and in Hawai'i, it is worsening), which suggests that my granddaughter will still be dealing with lower wages than men in her university graduating cohort, and in her later years of life. Indeed, "a girl born in the United States in 2017 has a life expectancy of 87 years. In 2082, when she turns 65, a wage gap will still remain in 13 states."<sup>3</sup>

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<sup>1</sup> AAUW, "The Fight for Equal Pay (updated September 2018)," [https://www.aauw.org/aauw\\_check/pdf\\_download/show\\_pdf.php?file=Gender\\_Pay\\_Gap\\_Hawaii](https://www.aauw.org/aauw_check/pdf_download/show_pdf.php?file=Gender_Pay_Gap_Hawaii); AAUW, *The Fight for Pay Equity: A State Road Map for Hawaii*, February, 2017.

<sup>2</sup> US Dept. of Labor, Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," <https://www.bls.gov/cps/cpsaat39.htm>; AAUW, *The Simple Truth about the Gender Pay Gap*, 2017; <https://www.aauw.org/resource/the-simple-truth-about-the-gender-pay-gap/>.

<sup>3</sup> "Status of Women in the States. Projected Year the Wage Gap Will Close by State. IWPR #R476." March 2017. [www.statusofwomen.org](http://www.statusofwomen.org)

Those who attend university are unable to eliminate the gender effect in salaries. Women experience its effects a year after receiving their undergraduate degrees, and their economic situations worsen in comparison to those of men ten years after graduation.<sup>4</sup>

Women are encouraged to select high-profit majors, such as STEM fields, but research shows that when women become more prevalent in a field, salaries drop in the profession.<sup>5</sup> There is a gender effect across occupations and within occupations, and women cannot change this situation acting individually.

There is little that women can do on their own to protect themselves against the gender pay gap. This is why government action, and legislation of this type is so important. If laws do not change, then women are abandoned to their economic plights.

This issue is complex, and it will require multiple types of legislation and policy interventions to correct. Some changes were put into place last year (Act 108), attempting to turn around our increasing salary inequality in this state, and more changes are needed this year. AAUW suggests that a number of steps are necessary to move toward wage equity in Hawai'i, and this bill will contribute to the process.<sup>6</sup>

There is a real historic challenge in improving wage equity for women in a nation with a Constitutional Convention, signed in 1787, that focused entirely on White men. Indeed, the USA was also slow to grant women the right to vote, with the 19<sup>th</sup> Amendment, in 1920, lagging after a Pacific neighbor, New Zealand, by almost three decades.

It is ironic that Icelandic women attained suffrage rights in the same year as Americans, but currently Northern European women have much better pay equity than is the case in the USA. Denmark has a strikingly low “gender pay gap of median earnings of full-time employees [including] all ages,” of 5.8%, compared to the US rate of 18.1%.<sup>7</sup> This is not surprising, given Nordic nations’ excellent performance in the 2017 *Global Gender Gap Report*, by the World Economic Forum.<sup>8</sup> It is worth examining how women in these countries have attained better gender equity in wages so rapidly. These are the nations that provide good policy and legal models for Hawai'i if we are going to decrease the gender pay gap in the islands. An important lesson for Hawai'i is that “Denmark, Finland, Iceland, Norway

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<sup>4</sup> AAUW, 2012, *Graduating to a Pay Gap*, <https://www.aauw.org/resource/graduating-to-a-pay-gap/>; AAUW, AAUW, 2007, *Behind the Pay Gap*, <https://www.aauw.org/files/2013/02/Behind-the-Pay-Gap.pdf>.

<sup>5</sup> Francine D. Blau & Lawrence M. Kahn, 2016, “The Gender Wage Gap,” <http://ftp.iza.org/dp9656.pdf>

<sup>6</sup> AAUW, “AAUW Policy Guide to Equal Pay in the States,” <https://www.aauw.org/resource/state-equal-pay-laws/>

<sup>7</sup> OECD, 2018, “Is the Last Mile the Longest: Economic Gains from Gender Equality in Nordic Countries: Summary Brief,” <http://www.oecd.org/els/emp/last-mile-longest-gender-nordic-countries-brief.pdf>, Table 1.

<sup>8</sup> World Economic Forum, *The Global Gender Gap Report 2017*, [http://www3.weforum.org/docs/WEF\\_GGGR\\_2017.pdf](http://www3.weforum.org/docs/WEF_GGGR_2017.pdf).

and Sweden ... explicitly support gender equality at home, at work, and in public life.”<sup>9</sup> The support is manifested in groundbreaking legislation, and some ideas from these Nordic climes appear in HB1192, for which our legislators should be congratulated.

HB1192 includes several important innovations, including: (a) protected class expansion, (b) pay transparency through salary range provision, (c) pay factor clarification, and (d) an updated definition of “work,” all of which are helpful for narrowing the gender pay gap. Many of these changes have occurred in other regions of the USA, and it would be good to update legislation progressively here, and to emulate Alaska, California, Colorado and 39 other states (protected class expansion), California (salary range), and 22 other states (an updated definition of “work”).<sup>10</sup>

Moving Hawai‘i forward to a situation in which women receive similar economic rewards to those of men has the potential to improve the situation of many Hawai‘i households, which tend to include multiple earners living under the same roof. Approximately 56,000 Hawaiian households survive on female wages, and 19% of these families are struggling with incomes below the poverty level.<sup>11</sup> It is estimated that 61.2% of children living in poverty in our state with working mothers would benefit “if working women were paid the same as comparable men [2016 data].”<sup>12</sup>

In conclusion the fixes provided in **HB1192 HD2 SD1** have high potential to improve women’s salaries across the state. **I urge the passage of this bill, with the modifications suggested by Younghee Overly (Public Policy Chair, AAUW-Hawaii).**

Thank you for the opportunity to testify.

Sincerely

*Susan J. Wurtzburg* Ph.D.

Susan J. Wurtzburg

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<sup>9</sup> OECD, 2018, “Is the Last Mile the Longest: Economic Gains from Gender Equality in Nordic Countries: Summary Brief,” <http://www.oecd.org/els/emp/last-mile-longest-gender-nordic-countries-brief.pdf>

<sup>10</sup> AAUW, “AAUW Policy Guide to Equal Pay in the States,” <https://www.aauw.org/resource/state-equal-pay-laws/>

<sup>11</sup> National Partnership for Women and Families, 2017, “Hawaii Women and the Wage Gap,” <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2017-hi-wage-gap.pdf>

<sup>12</sup> Table 3: Impact of Equal Pay on Children. Institute for Women’s Policy Research, “Status of Women in the States. IWPR #C457.” [www.statusofwomendata.org](http://www.statusofwomendata.org)

**HB-1192-SD-1**

Submitted on: 4/1/2019 8:08:18 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lea Minton	Individual	Support	No

Comments:

I strongly support this bill and request JDC/WAM to pass HB1192 HD2 SD1.



**LATE**

**HB-1192-SD-1**

Submitted on: 4/2/2019 3:40:03 PM  
Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Monk	Individual	Support	No

Comments: