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## A BILL FOR AN ACT

RELATING TO EQUAL PAY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature is committed to ensuring that  
2 women and men are paid equally for work that is substantially  
3 equal with respect to the skill, effort, and responsibility  
4 required to perform the work and the conditions under which the  
5 work is performed. The legislature recognizes that Act 108,  
6 Session Laws of Hawaii 2018, is a significant step toward  
7 ensuring that the pay disparity between men and women  
8 diminishes. However, more needs to be done.

9           The American Association of University Women reports that  
10 in 2018, median annual earnings for women in Hawaii were just  
11 eighty-three per cent of men's earnings, which represents a  
12 seventeen per cent gap. Furthermore, native Hawaiian and other  
13 Pacific Islander women earn only sixty-two per cent of white  
14 male earnings nationally.

15           Similarly to how Hawaii has led the way on many civil  
16 rights issues, this Act proposes to establish Hawaii as a leader  
17 in the area of pay equity and clarifies that Hawaii's law is



1 more protective of pay equity rights than the federal Equal Pay  
2 Act of 1963 or Title VII of the Civil Rights Act of 1964. It is  
3 not the intent of the legislature to affect or diminish the  
4 existing, broader protections provided under part I of chapter  
5 378, Hawaii Revised Statutes.

6 The purpose of this Act is to:

- 7 (1) Amend the list of protected classes under Hawaii's  
8 equal pay statute to make the protections afforded by  
9 this section consistent with the state statute that  
10 prohibits employment discrimination;
- 11 (2) Clarify the factors that can be used by employers to  
12 justify differences in compensation based on  
13 seniority, merit, or other non-discriminatory  
14 purposes;
- 15 (3) Provide pay transparency by requiring employers to  
16 make salary range information available to employees  
17 and job candidates, which will help employers manage  
18 their pay expenses and encourage pay equity; and
- 19 (4) Update the term "equal work" as used in state non-  
20 discrimination statutes to "substantially similar



1 work," which is the more accurate term used in many  
2 other states.

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

5 "§378-2.3 Equal pay [~~,- sex discrimination~~]. (a) No  
6 employer shall discriminate [~~between~~] among employees [~~because~~  
7 ~~of sex,~~] by paying [~~wages~~] compensation to employees [~~in an~~  
8 ~~establishment~~] at a rate less than the rate at which the  
9 employer pays [~~wages~~] compensation to employees of [~~the~~  
10 ~~opposite~~] another race, sex [~~in the establishment~~] including  
11 gender identity or expression, sexual orientation, age,  
12 religion, color, ancestry, disability, marital status, arrest  
13 and court record, or domestic or sexual violence victim status  
14 for [~~equal~~] substantially similar work [~~on jobs the performance~~  
15 ~~of which requires equal~~] when viewed as a composite of skill,  
16 effort, and responsibility, [~~and that are~~] performed under  
17 similar working conditions. [~~Payment~~]

18 (b) Compensation differentials [~~resulting from:~~] do not  
19 violate this section if the employer demonstrates that the  
20 differential solely results from any of the following factors:



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

5           (2) A non-discriminatory merit system;

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

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

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

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

12           (4) A factor that has neither the purpose nor the effect  
13                     of discriminating on any basis prohibited by this  
14                     section.

15           (c) For the purposes of subsection (b) (4), a factor has  
16 the purpose of discriminating on a basis prohibited by this  
17 section if its general use or application in a particular case  
18 is motivated, in whole or in part, by considerations of race,  
19 sex including gender identity or expression, sexual orientation,  
20 age, religion, color, ancestry, disability, marital status,



1 arrest and court record, or domestic or sexual violence victim  
2 status.

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

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

9 (f) An unlawful employment practice in violation of this  
10 section occurs when:

11 (1) An employer adopts a discriminatory compensation  
12 decision or discriminatory practice;

13 (2) An individual becomes subject to the discriminatory  
14 compensation decision or practice; or

15 (3) An individual is affected by application of the  
16 discriminatory compensation decision or practice,  
17 including each time wages, benefits, or other  
18 compensation are paid.

19 ~~[(b)]~~ (g) An employer shall not retaliate or discriminate  
20 against an employee for, nor prohibit an employee from,  
21 disclosing the employee's wages, discussing and inquiring about



1 the wages of other employees, or aiding or encouraging other  
2 employees to exercise their rights under this section[-];  
3 provided that this subsection shall not apply to instances in  
4 which an employee who has access to the wage information of  
5 other employees as a part of such employee's essential job  
6 functions discloses the wages of such other employees to  
7 individuals who do not otherwise have access to such  
8 information, unless such disclosure is in response to a  
9 complaint or charge or in furtherance of an investigation,  
10 proceeding, or hearing; provided further that nothing in this  
11 subsection shall be construed to limit the rights of an employee  
12 provided under any other provision of law.

13 (h) For the purposes of this section, the meaning of  
14 "compensation" is to be construed broadly and shall include but  
15 not be limited to use of or access to employee expense accounts,  
16 use of a vehicle, housing, travel budgets, cost reimbursements,  
17 paid vacation or sick leave, sabbatical benefits, endowed  
18 chairs, insurance, stock options, pension contributions, and  
19 other employee benefits associated with the individual  
20 employee's unique job duties, situation, and requirements.



1        (i) For the purposes of this section, "substantially  
 2 similar work" means work that is mostly similar in skill,  
 3 effort, and responsibility, and is performed under similar  
 4 working conditions; provided that:

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

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

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

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

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

16        (1) Inquire about the salary history of an applicant for  
 17 employment; or

18        (2) Rely on the salary history of an applicant in  
 19 determining the salary, benefits, or other  
 20 compensation for the applicant during the hiring



1 process, including the negotiation of an employment  
2 contract.

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

14 (c) This section shall not apply to:

15 (1) Applicants for internal transfer or promotion with  
16 their current employer;

17 (2) Any attempt by an employer, employment agency, or  
18 employee or agent thereof, to verify an applicant's  
19 disclosure of non-salary related information or  
20 conduct a background check; provided that if a  
21 verification or background check discloses the





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1 applicant's salary history, that disclosure shall not  
2 be relied upon during the hiring process for purposes  
3 of determining the salary, benefits, or other  
4 compensation of the applicant, including the  
5 negotiation of an employment contract; and

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

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

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

18 (f) An employer shall disclose an hourly rate or salary  
19 range in all job listings.

20 (g) For the purposes of this section, the meaning of  
21 "compensation" is to be construed broadly and shall include but



1 not be limited to use of or access to employee expense accounts,  
2 use of a vehicle, housing, travel budgets, cost reimbursements,  
3 paid vacation or sick leave, sabbatical benefits, endowed  
4 chairs, insurance, stock options, pension contributions, and  
5 other employee benefits associated with the individual  
6 employee's unique job duties, situation, and requirements.

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

8 "Inquire" means to:

9 (1) Communicate any question or statement to an applicant  
10 for employment, an applicant's current or prior  
11 employer, or a current or former employee or agent of  
12 the applicant's current or prior employer, in writing,  
13 verbally, or otherwise, for the purpose of obtaining  
14 an applicant's salary history; or

15 (2) Conduct a search of publicly available records or  
16 reports for the purpose of obtaining an applicant's  
17 salary history;

18 provided that this shall not include informing an applicant, in  
19 writing or otherwise, about the proposed or anticipated salary  
20 or salary range for the position.



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1 "Salary history" includes an applicant for employment's  
 2 current or prior wage, benefits, or other compensation, but  
 3 shall not include any objective measure of the applicant's  
 4 productivity, such as revenue, sales, or other production  
 5 reports."

6 SECTION 4. This Act does not affect rights and duties that  
 7 matured, penalties that were incurred, and proceedings that were  
 8 begun before its effective date.

9 SECTION 5. Statutory material to be repealed is bracketed  
 10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Equal Pay; Wage Discrimination; Salary or Wage History;  
Employment

**Description:**

Conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination. Clarifies allowable justifications for compensation differentials and remedies for pay disparity. Requires employers to disclose wage ranges to employees and prospective employees.

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