

JAN 24 2019

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



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

6 The purpose of this Act is to:

- 7 (1) Amend the list of protected classes under Hawaii's  
8 equal pay statute to make the protections afforded by  
9 this section consistent with the state statute that  
10 prohibits employment discrimination;
- 11 (2) Provide pay transparency by requiring employers to  
12 make salary range information available to employees  
13 and job candidates, which will help employers manage  
14 their pay expenses and encourage pay equity;
- 15 (3) Clarify the factors that can be used by employers to  
16 justify differences in compensation based on  
17 seniority, merit, or other non-discriminatory  
18 purposes; 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 defendant 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 [~~b~~] (f) An employer shall not retaliate or discriminate  
10 against an employee for, nor prohibit an employee from,  
11 disclosing the employee's wages, discussing and inquiring about  
12 the wages of other employees, or aiding or encouraging other  
13 employees to exercise their rights under this section."

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

16 "[~~+~~] §378-2.4 [~~+~~] **Employer inquiries into and consideration**  
17 **of salary or wage history.** (a) No employer, employment agency,  
18 or employee or agent thereof shall:

19 (1) Inquire about the salary history of an applicant for  
20 employment; or



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

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

17          (c) This section shall not apply to:

18           (1) Applicants for internal transfer or promotion with  
19           their current employer;

20           (2) Any attempt by an employer, employment agency, or  
21           employee or agent thereof, to verify an applicant's



1 disclosure of non-salary related information or  
2 conduct a background check; provided that if a  
3 verification or background check discloses the  
4 applicant's salary history, that disclosure shall not  
5 be relied upon during the hiring process for purposes  
6 of determining the salary, benefits, or other  
7 compensation of the applicant, including the  
8 negotiation of an employment contract; and

9 (3) Public employee positions for which salary, benefits,  
10 or other compensation are determined pursuant to  
11 collective bargaining.

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

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



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

6        (g) An unlawful employment practice in violation of this  
7 section occurs when:

8        (1) An employer adopts a discriminatory compensation  
9 decision or other practice;

10       (2) An individual becomes subject to the discriminatory  
11 decision or practice; or

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

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





1        [~~(d)~~] (i) For purposes of this section:

2        "Inquire" means to:

3        (1) Communicate any question or statement to an applicant  
4                for employment, an applicant's current or prior  
5                employer, or a current or former employee or agent of  
6                the applicant's current or prior employer, in writing,  
7                verbally, or otherwise, for the purpose of obtaining  
8                an applicant's salary history; or

9        (2) Conduct a search of publicly available records or  
10               reports for the purpose of obtaining an applicant's  
11               salary history;

12       provided that this shall not include informing an applicant, in  
13       writing or otherwise, about the proposed or anticipated salary  
14       or salary range for the position.

15       "Salary history" includes an applicant for employment's  
16       current or prior wage, benefits, or other compensation, but  
17       shall not include any objective measure of the applicant's  
18       productivity, such as revenue, sales, or other production  
19       reports."





# S.B. NO. 1375

**Report Title:**

Equal Pay; Salary or Wage History; Employment

**Description:**

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

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

