

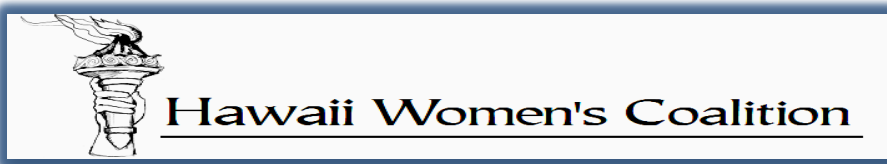
HB-1192

Submitted on: 2/6/2019 9:26:52 AM

Testimony for LAB on 2/7/2019 9:30:00 AM

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

Comments:



COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

DATE: Thursday, February 7, 2019

TIME: 9:30 a.m.

PLACE: Conference Room 309

Strong Support for HB1192 relating to equal pay

Aloha Chair Johanson, Vice Chair Eli and members,

The Coalition is pleased to support this important legislation. Please note that the gender pay gap has **worsened** in Hawaii: the median annual earnings for women were 84 percent of men's earnings in Hawaii in 2015 and 81 percent in 2017. While passage of Act 108 in 2018, effective January 1, 2019 was a step towards ensuring pay equity, this bill would provide strong equal pay protection with a minimal cost or disruption to employers.

This bill would in effect put substance and teeth into the phrase "equal opportunity." It would:

1. Amend the list of protected classes under Hawaii's equal pay statute to make the protections afforded by this section consistent with the state statute that prohibits employment discrimination;
2. Provide pay transparency by requiring employers to make salary range information available to employees and job candidates, which will help employers manage their pay expenses and encourage pay equity;
3. Prohibit reducing another employee's pay to comply with law and agreement to a lesser wage as a defense;
4. Clarify the factors that can be used by employers to justify differences in compensation based on seniority, merit, or other non-discriminatory purposes; and
5. Update the term "equal work" as used in state non-discrimination statutes to "substantially similar work," which is the more accurate term used in many other states.

Hawaii has been in the forefront of civil rights. This will continue the legacy. Patsy Mink would be proud.

Please pass this bill. Mahalo for the opportunity to testify,

Ann S. Freed

Co-Chair, Hawaii Women's Coalition

HB-1192

Submitted on: 2/5/2019 9:58:19 AM

Testimony for LAB on 2/7/2019 9:30:00 AM

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

Comments:

About time!



of Hawaii

February 4, 2019

From: Younghee Overly, Public Policy Chair, AAUW Hawaii

To: Hawaii State House Committee on Labor and Public Employment

Hearing Date/Time: February 7, 2019 9:30AM

Place: Hawaii State Capitol, Rm. 309

Re: Testimony in SUPPORT of HB1192

Dear Chair Johanson, Vice Chair Eli, and Members of the Committee,

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

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

- Research shows that workers stay longer and are more productive, when working for companies which treat them with dignity. A recent Harvard-Berkeley study showed that pay inequality decreased worker attendance, cooperation, and output.⁴
- Salary transparency and attempts at pay equity will attract millennials; will be more attractive in a competitive market.⁵
- Being up front about wages saves businesses time so that they are not interviewing candidates that will eventually turn them down. In addition to fairness, this is also about efficiency.⁶

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

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

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

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

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

- Salary ranges help employers control their pay expenses and ensure pay equity among employees. It is critical that employers have rational explanations for why they pay their employees a certain rate, and defined salary ranges help accomplish that.⁷

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

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

Please pass HB1192 as is and mahalo for this opportunity to testify in support of this important bill.

Sincerely,

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

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

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

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

HB-1192

Submitted on: 2/4/2019 6:44:24 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

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

Comments:



AMERICANS FOR DEMOCRATIC ACTION

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		

Feb. 5 , 2018

TO: Honorable Chair Johanson & LAB Committee Members

RE: HB 1192 Relating to Equal Pay

Support for hearing on Feb. 7

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 as it would strengthen the laws against wage discrimination. As the bill introduction notes: " The American Association of University Women reports that in 2017, median annual earnings for women in Hawaii were just eighty-one per cent of men's earnings, which represents an almost twenty per cent gap. Hawaii ranks twenty-third in income equality out of all states and the District of Columbia, according to the most recent census data. Furthermore, native Hawaiian and other Pacific Islander women earn only sixty-two per cent of white male earnings nationally, and Hispanic women earn even less."

Thank you for your favorable consideration.

Sincerely,

John Bickel President





HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 1192 – Relating to Equal Pay
House Committee on Labor & Public Employment
Thursday, February 7, 2019, 9:30 AM, conference room 309

Dear Chair Johanson, Vice Chair Eli, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **HB 1192**. 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 session.

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

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

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

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

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

We appreciate your consideration of this testimony.

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

HB-1192

Submitted on: 2/4/2019 6:12:34 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Support	No

Comments:

HB-1192

Submitted on: 2/4/2019 6:35:21 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

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

Comments:

I strongly support HB1192 and urge you to pass this bill. HB1192 amends the list of protected classes under Hawaii's equal pay statute with minimal cost to employers. This bill has the ability to create more desirable places of employment through salary transparency. Thank you for the opportunity to testify.

Hearing Date: Thursday, February 7, 2019, 9:30 am, Room 309

To: House Committee on Labor & Public Employment
Chair, Representative Aaron Johanson
Vice Chair, Representative Stacelynn Eli

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

Re: TESTIMONY IN SUPPORT OF HB 1192 - 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 Relating to Equal Pay.

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

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

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

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

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

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

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

Mahalo for allowing me to submit my testimony today.

To: Hawaii State House Committee on Labor and Public Employment
Hearing Date/Time: Thursday, February 7, 2019 (9:30 am)
Place: Hawaii State Capitol, Rm. 309
Re: Testimony in support of HB1192 (relating to equal pay)

Dear Representative Aaron Ling Johanson (Chair), Representative Stacelynn K.M. Eli (Vice Chair), and Committee Members,

I am grateful for this opportunity to testify in **strong support of HB1192 (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%.¹ 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.² 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 is not diminishing any time soon (and in Hawai'i, it is worsening), which suggests that my grand-daughter 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."³

Those who attend university are unable to eliminate the gender effect in salaries. Women experience its effects a year after receiving their undergraduate degrees,

¹ 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; AAUW, *The Fight for Pay Equity: A State Road Map for Hawaii*, February, 2017.

² 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/>.

³ "Status of Women in the States. Projected Year the Wage Gap Will Close by State. IWPR #R476." March 2017. www.statusofwomen.org

and their economic situations worsen in comparison to those of men ten years after graduation.⁴

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.⁵ 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 plight.

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.⁶

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 19th 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%.⁷ This is not surprising, given Nordic nations’ excellent performance in the 2017 *Global Gender Gap Report*, by the World Economic Forum.⁸ 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 and Sweden ... explicitly support gender equality at home, at work, and in public

⁴ 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>.

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

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

⁷ 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.

⁸ World Economic Forum, *The Global Gender Gap Report 2017*, http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

life.”⁹ 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”).¹⁰

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.¹¹ 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].”¹²

In conclusion the fixes provided in **HB1192** have high potential to improve women’s salaries across the state. **I urge the passage of this bill.**

Thank you for the opportunity to testify.

Sincerely

Susan J. Wurtzburg Ph.D.

⁹ 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>

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

¹¹ 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>

¹² 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

Joanna Amberger
1800A Laniloa Place
Wahiawa, HI 96786

I am writing in support of the proposed legislation HB1192 relating to equal pay. Hawaii has frequently been a progressive leader in civil rights and we can be a leader again when it comes to pay equity. The proposed bill's measures should provide additional protections for employees with minimal disruption or cost to employers. As a local employer, when I hire an employee I know what my budget is and can reasonably provide a salary range for my prospective employees. This is a simple tool that we can use to level the playing field.

Research also shows that these measures can benefit both employers and employees:

- Workers stay longer and are more productive, when working for companies that treat them with dignity. A recent Harvard-Berkeley study showed that pay inequality decreased worker attendance, cooperation, and output.³
- Salary transparency and attempts at pay equity appeal to millennials and companies will be more attractive in a competitive market.⁴
- 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.⁵
- Salary ranges help employers control their pay expenses and ensure pay equity among employees. It is critical that employers have rational explanations for why they pay their employees a certain rate, and defined salary ranges help accomplish that.⁶
- The gender pay gap is found across ethnic/racial groups, age groups, educational groups, and occupational groups.⁷
- The gender pay gap has worsened in Hawaii: the median annual earnings for women were 84 percent of men's earnings in Hawaii in 2015 and 81 percent in 2017.⁸
- Women of color are affected particularly heavily by pay inequality: Native Hawaiian and Pacific Islanders women's median annual earnings were 62 percent of white men's earnings.⁹
- The gender pay gap penalizes all households in Hawaii, since many households rely on the paychecks of more than one household member. The gender pay gap penalizes children excessively, since many children reside in female-headed households. If the \$8,149 annual gender pay gap is eliminated, a working woman in Hawaii would have enough money to purchase 11.2 additional months of child care and 5.5 additional months of rent.¹⁰

¹ National Partnership for Women and Families – America's Women and the Wage Gap, September 2018, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>; National Partnership for Women and Families – Hawaii Women and the Wage Gap April 2017, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-hi-wage-gap.pdf>

² AAUW Policy Guide to Equal Pay in the States, <https://www.aauw.org/resource/state-equal-pay-laws/>

³ Emily Breza, Supreet Kaur & Yogita Shamdasanani 2016 "The Morale Effects of Pay Inequality," *NBER Working Papers*, National Bureau of Economic Research

⁴ Forbes, <https://www.forbes.com/sites/jessicalutz/2017/11/30/millennials-are-slowly-killing-salary-secrecy-and-thats-a-good-thing/#67a129946015>

⁵ Glassdoor, “Is Salary Transparency More Than a Trend”,
https://www.glassdoor.com/research/app/uploads/sites/2/2015/04/D_Report_2.pdf

⁶ Society for Human Resource Management, “How to Establish Salary Range”,
<https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/howtoestablishsalaryranges.aspx>

⁷ AAUW The Simple Truth about the Gender Pay Gap – Fall 2018 Edition, <https://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>)

⁸ National Partnership for Women and Families – America’s Women and the Wage Gap, September 2018, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>; National Partnership for Women and Families – Hawaii Women and the Wage Gap April 2017, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-hi-wage-gap.pdf>

⁹ AAUW The Simple Truth about the Gender Pay Gap – Fall 2018 Edition, <https://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>)

¹⁰ National Partnership for Women and Families – What’s the Wage Gap in the States, September 2018, <http://www.nationalpartnership.org/our-work/workplace/4-2018-wage-gap-map.html>

February 6, 2019

To: Hawaii State House Committee on Labor and Public Employment

Hearing Date/Time: February 7, 2019 9:30 AM

Place: Hawaii State Capitol, Room 309

Re: Testimony in SUPPORT of HB1192

Dear Representative Johanson, Chair, Representative Eli, Vice-Chair and Members of the Committee,

It is disappointing to learn that the gender pay gap has widened in Hawaii. The median annual earnings for women were 84% of men's earnings in Hawaii in 2015 but slipped to 81% in 2017, barely above the 80% national average.

Hawaii has led the way in civil rights and we should be a leader in pay equity.

The passage of SB 2351 in the 2018 legislative session was an important step in helping women avoid taking a gender penalty into new employment by mandating that employers may not request previous salary information.

SB1375 focuses on a further necessary step, "pay transparency". This provision which would require employers to make salary range information available to employees and job candidates can help to erase gender differences in salaries. This and other provisions of the bill will ensure more attention is paid to factors that diminish women's pay packets in comparison to their male counterparts.

Please pass SB1375. I feel strongly that this bill is needed to help women to achieve economic equity in employment and help to move Hawaii toward a more equitable work environment.

Thank you for the opportunity to testify.

Janet Morse
AAUW Hawaii member

LATE



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 7, 2019
Rm. 309, 9:30 a.m.

To: The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
Members of the House Committee on Labor and Public Employment

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

Re: H.B. No. 1192

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

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

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

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

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

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

Federal Law: Differences and Interplay Between EPA and Title VII

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

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

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

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

Key differences between the EPA and Title VII

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

do not violate this section.

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

And,

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

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

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

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

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

(c) This section shall not apply to:

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

(d) For purposes of this section:

"Inquire" means to:

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

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

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION AND RECOMMENDATIONS

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

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

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

SUGGESTED AMENDMENTS

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

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

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

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

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

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

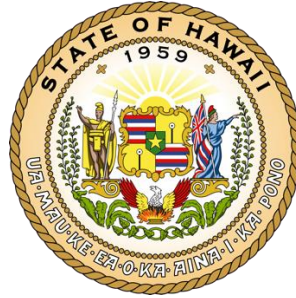
(f) An employer shall disclose an hourly rate or salary range in all job listings ~~[-and shall select a salary within the posted range or, if necessary, republish each job listing with an adjusted range before selecting an hourly pay rate or salary for a prospective employee].~~

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

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

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

LATE



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

Prepared for the House Committee on Labor & Public Employment

In Support of HB1192
Thursday, February 7, 2019, at 9:30 a.m. in Room 309

Dear Chair Johanson, Vice Chair Eli, and Honorable Members,

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

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

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

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

Sincerely,

Khara Jabola-Carolus

LATE

HB-1192

Submitted on: 2/6/2019 4:41:14 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

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

Comments: