
Labor Committee

HB 1646

Brief Description: Enacting the equal pay opportunity act by amending and enhancing enforcement of the equal pay act and protecting worker communications about wages and employment opportunities.

Sponsors: Representatives Senn, Walsh, Lytton, Santos, Orwall, Wylie, Robinson, Reykdal, Gregerson, Appleton, Jinkins, Farrell, Van De Wege, Carlyle, McBride, Kagi, Goodman, Kilduff, Tarleton, Ortiz-Self, Cody, Riccelli, Clibborn, Ryu, Gregory, Walkinshaw, Springer, Sawyer, Fitzgibbon, Hudgins, Fey, Dunshee, Peterson, Moeller, Bergquist, S. Hunt, Moscoso, Pollet, Takko, Sells, Sullivan, Stanford, Morris, Tharinger and Ormsby.

Brief Summary of Bill

- Modifies the Equal Pay Act to include prohibiting the provision of less favorable employment opportunities based on gender and modify remedies.
- Prohibits retaliation for certain workplace wage discussions and other matters.

Hearing Date: 2/2/15

Staff: Joan Elgee (786-7106).

Background:

The Industrial Welfare Act contains a number of wage and wage-related provisions. One provision, the Equal Pay Act (EPA), provides that an employer who discriminates in the payment of wages as between sexes or who pays any female a less wage than males similarly employed is guilty of a misdemeanor. The EPA further provides that if a female receives less compensation because of sex discrimination, she may sue and recover the difference in compensation she should have received. It is a defense that the difference in wages is based in good faith on a factor or factors other than sex.

The Washington Law Against Discrimination, administered by the Human Rights Commission (Commission), also makes it an unfair employment practice to discriminate in compensation

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because of sex. Under a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC), complaints alleging a violation of the EPA filed with the Commission are investigated by the EEOC.

The National Labor Relations Act protects the right of some employees to discuss the terms and conditions of employment.

Summary of Bill:

The Equal Pay Opportunity Act is enacted.

Equal Pay Act. The EPA is modified in several respects. Providing less favorable employment opportunities based on gender is a violation of the EPA for purposes of the civil cause of action. "Less favorable employment opportunities" means assigning or directing the employee into a less favorable career track or position based on gender. Factors to be considered include failing to provide the employee information about advancement or assigning work less likely to lead to future opportunities.

The employer defense is changed to provide that the differential in compensation or employment opportunities must be based on a bona fide job-related factor, including education, training, or experience, that is not based on gender, unless the differential is otherwise permitted by law.

References are changed from "sex" to "gender" and language referring to "males" and "females" is deleted.

Workplace practices. An employer may not engage in the following practices:

1. require employee nondisclosure of wages as a condition of employment;
2. require an employee to sign a document that prevents the employee from disclosing his or her wages; and
3. retaliate against an employee for:
 - inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of another employee;
 - asking the employer to provide a reason for the employee's wages or a lack of employment advancement available to the employee; or
 - aiding or encouraging an employee to exercise their rights.

Retaliation. An employer may not discharge or otherwise discriminate against an employee for filing a complaint or taking other specified actions under the equal pay or workplace practices provision.

Enforcement. The Director (Director) of the Department of Labor and Industries (Department) may investigate complaints under the EPA, and the workplace practices and retaliation provisions. The Director may require the testimony of witnesses and production of documents. If the Director has good cause to believe the employer has a pattern of complaints or violations of the EPA, the Director may require the provision of data, including data identifying the sex, race, compensation, and job classifications of employees. An employer who fails to provide the data within a reasonable time may not use the data in any appeal to challenge a determination by the Department.

If the Director finds a violation occurred, the Director may order the employer to pay the complainant actual damages; statutory damages of twice the actual damages or \$5,000, whichever is greater; and interest. The Director may also impose a civil penalty of not more than \$200 for a first violation and \$1,000 for a repeat violation, and order payment to the Department of the costs of investigation and enforcement and any other appropriate relief. Civil penalties are deposited into the Supplemental Pension Fund.

The cause of action under the EPA is modified and a cause of action is allowed for a violation of the workplace practices and retaliation provisions. The EPA cause of action is no longer limited to females. Under all of these provisions, an employee may seek actual damages; statutory damages of twice the actual damages or \$5,000, whichever is greater; interest; and costs and reasonable attorneys' fees. The court may also order reinstatement and injunctive relief. An interested party may bring an action on behalf of one or more employees.

Other. Rule-making by the Department is authorized.

Definitions are provided for "compensation," "interested party," and other terms.

Appropriation: None.

Fiscal Note: Requested on January 27, 2015.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.