

HOUSE BILL REPORT

HB 1646

As Reported by House Committee On:
Labor

Title: An act relating to 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.

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 History:

Committee Activity:

Labor: 2/2/15, 2/9/15 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 2 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 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 Substitute 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.

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 EPA or workplace practices provision.

Enforcement. 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.

Other. Rule-making by the Department is authorized.

"Compensation" means discretionary and nondiscretionary wages and benefits.

Substitute Bill Compared to Original Bill:

The substitute bill:

- eliminates provisions allowing an interested party to bring an action on behalf of one or more employees;
- strikes administrative enforcement by the Department of Labor and Industries;
- striking as a factor to be considered in evaluating "less favorable employment opportunities" the assigning of work less likely to lead to promotion or future opportunities;
- restores "in violation of this section" language in the EPA, thus retaining the interpretation that "similarly employed" applies to the civil cause of action; and
- makes language for compensation and opportunity violations more parallel.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The new economy means new issues. The EPA is 70 years old and this bill is an opportunity to update it. Women in Washington make 78 cents for every dollar earned by a man. Black and Latina women make even less. Women are paid less than men in every profession, even when taking education, experience, and negotiating skills into account. Women working full time end up earning \$18,000 a year less than men. There is occupational segregation through which jobs that tend to be male dominated pay more. For

example, meat cutters are paid more than deli workers, and law enforcement jobs pay more than clerical jobs.

Equal pay is important to our economy. A new attorney was offered a position and learned that a man was offered a 20 percent greater salary. This practice is systemic. A lot of immigrant women don't know their rights. It's shocking that women are still behind after what previous generations have worked for. Current antidiscrimination laws are not effective to close the wage gap. This bill will help eradicate the unequal pay. All employees should have access to information, and be able to discuss their wages and ask about their wages without retaliation. Girls thinking about college and careers should have the same opportunities as boys. Women are worth more than spare change. If women customers are making more money, small businesses can do better. It's a small step to make things fair and ensures a level playing field.

Proponents are working with business to address concerns. It is a bipartisan bill.

(With concerns) Opponents are working with the prime sponsor. Equal pay is supported, but the bill is unnecessary. A cause of action for retaliation and recovery of attorneys' fees and costs are already permitted. The National Labor Relations Act prohibits retaliation for engaging in concerted activity.

(Other) The EPA, Civil Rights Act, and Washington Law Against Discrimination already protect women. The language in the bill is very subjective. "Less favorable" and "bona fide factors" are not defined. The bill creates a burden on employers and ultimately harms workers. A number of factors influence the gap in wages. Women take more career interruptions and are more likely to seek jobs with flexibility. Flexible jobs often pay less. Workforce interruptions have an influence on long-term wages. More women than men take time off to care for a family member or child. When the type of employment and time out of workforce are accounted for, women earn 97 cents on the dollar. In contrast, single women without children make 8 percent more than similar men.

(Opposed) None.

Persons Testifying: (In support) Representative Senn, prime sponsor; Janet Chung, Legal Voice; Sandy Restrepo, Colectiva Legal del Pueblo; Olivia Roskill; and Don Orange, Main Street Alliance.

(With concerns) Bob Battles, Association of Washington Business.

(Other) Erin Shannon, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: None.