

HOUSE BILL REPORT

ESHB 1646

As Passed House:
February 3, 2016

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: House Committee on Labor & Workplace Standards (originally sponsored by 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 & Workplace Standards: 2/2/15, 2/9/15 [DPS], 1/19/16 [DP].

Floor Activity:

Passed House: 3/11/15, 55-43.

Floor Activity:

Passed House: 2/3/16, 56-41.

Brief Summary of Engrossed 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 & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; McCabe and G. Hunt.

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 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 Engrossed 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 use reasonable means to provide the employee information about advancement in their career tracks or positions, including by posting information on websites, employee common areas, or at the human resources office.

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.

An employer may prohibit a human resource manager from disclosing the wages of other employees.

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 of Labor and Industries is authorized.

"Compensation" means discretionary and nondiscretionary wages and benefits.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

See House Bill Report in the 2015 Legislative Session.

Persons Testifying: See House Bill Report in the 2015 Legislative Session.

Persons Signed In To Testify But Not Testifying: None.