

# SENATE BILL REPORT

## ESHB 1646

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As of March 27, 2015

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

**Committee Activity:** Commerce & Labor: 3/30/15.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Mac Nicholson (786-7445)

**Background:** The Industrial Welfare Act contains a number of wage and wage-related provisions. One provision prohibits discrimination in the payment of wages as between sexes, and provides that an employer who pays any female a lower wage than males similarly employed is guilty of a misdemeanor. A female who receives less compensation because of sex discrimination may sue and recover the difference in compensation. An employer may assert 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 Equal Pay Act filed with the Commission are investigated by the EEOC.

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*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.*

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

**Summary of Bill:** The statute prohibiting discrimination in the payment of wages is modified in several respects:

- Instead of payment of wages, the bill prohibits discrimination in compensation, which includes discretionary and nondiscretionary wages and benefits. An employer who discriminates in providing compensation based on gender is guilty of a misdemeanor;
- A new cause of action is created, allowing an employee to recover damages if the employee can show the employer provided less-favorable employment opportunities based on gender discrimination. 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;
- In a civil lawsuit, the employee is entitled to actual damages; statutory damages of twice the actual damages or \$5,000; interest of 1 percent per month on all compensation owed; and costs and reasonable attorneys' fees; and
- 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.

An employer may not engage in the following workplace practices:

- require nondisclosure of wages as a condition of employment;
- require an employee to sign a waiver that prevents the employee from disclosing the employee's wages; and
- discharge or retaliate against an employee for discussing wages of the employee or any other employee; for asking the employer to provide a reason for the employee's wages or lack of employment advancement; or for aiding or encouraging an employee to exercise their rights under the legislation.

An employer may prohibit a human resources manager from disclosing wages unless disclosure is required by law.

An employer may not discharge or otherwise discriminate against any employee for filing any complaint, instituting any proceeding, or testifying in a proceeding under the legislation; or because the employee exercised any right afforded by the legislation.

A civil cause of action is created, allowing an employee to recover damages for violations of workplace practices or retaliatory actions prohibited by the legislation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.