

2SHB 1506 - H AMD 663

By Representative McCabe

NOT ADOPTED 01/17/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature finds that despite
4 existing equal pay laws, there continues to be a gap in wages and
5 advancement opportunities among workers in Washington, especially
6 women. Income disparities limit the ability of women to provide for
7 their families, leading to higher rates of poverty among women and
8 children. The legislature finds that in order to promote fairness
9 among workers, employees must be compensated equitably. Further,
10 policies that encourage retaliation or discipline towards workers who
11 discuss or inquire about compensation prevent workers from moving
12 forward.

13 The legislature intends to update the existing Washington state
14 equal pay act, not modified since 1943, to address income
15 disparities, employer discrimination, and retaliation practices, and
16 to reflect the equal status of all workers in Washington state.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

20 (1) "Compensation" means discretionary and nondiscretionary wages
21 and benefits provided by an employer to an employee as a result of
22 the employment relationship.

23 (2) "Department" means the department of labor and industries.

24 (3) "Director" means the director of the department of labor and
25 industries, or the director's designated representative.

26 (4) "Employee" means an employee who is employed in the business
27 of the employee's employer whether by way of manual labor or
28 otherwise.

29 (5) "Employer" means any person, firm, corporation, partnership,
30 business trust, legal representative, or other business entity which
31 engages in any business, industry, profession, or activity in this

1 state and employs one or more employees, and includes the state, any
2 state institution, state agency, political subdivisions of the state,
3 and any municipal corporation or quasi-municipal corporation.

4 **Sec. 3.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to
5 read as follows:

6 (1) Any employer in this state(~~(, employing both males and~~
7 ~~females, who shall discriminate in any way in the payment of wages as~~
8 ~~between sexes or who shall pay any female a less wage, be it time or~~
9 ~~piece work, or salary, than is being paid to males)) who~~
10 discriminates in any way in providing compensation based on gender
11 between similarly employed(~~(, or in any employment formerly performed~~
12 ~~by males, shall be)) employees of the employer is guilty of a~~
13 misdemeanor. If any ((female)) employee ((shall)) receives less
14 compensation because of ((being discriminated against))
15 discrimination on account of ((her sex, and)) gender in violation of
16 this section, ((she shall be)) that employee is entitled to ((recover
17 in a civil action the full amount of compensation that she would have
18 received had she not been discriminated against)) the remedies in
19 sections 7 and 8 of this act. In such action, however, the employer
20 shall be credited with any compensation which has been paid to
21 ((her)) the employee upon account. ((A differential in wages between
22 employees based in good faith on a factor or factors other than sex
23 shall not constitute discrimination within the meaning of RCW
24 49.12.010 through 49.12.180.))

25 (2) For purposes of this section, employees are similarly
26 employed if the individuals work for the same employer, the
27 performance of the job requires similar skill, effort, and
28 responsibility, and the jobs are performed under similar working
29 conditions. Job titles alone are not determinative of whether
30 employees are similarly employed.

31 (3)(a) Discrimination within the meaning of this section does not
32 include a differential in compensation based in good faith on a bona
33 fide job-related factor or factors that:

34 (i) Are consistent with business necessity;

35 (ii) Are not based on or derived from a gender-based
36 differential; and

37 (iii) Account for the entire differential. More than one factor
38 may account for the differential.

39 (b) Such bona fide factors include, but are not limited to:

- 1 (i) Education, training, or experience;
2 (ii) A seniority system;
3 (iii) A merit system;
4 (iv) A system that measures earnings by quantity or quality of
5 production; or
6 (v) A bona fide regional difference in compensation levels.
7 (c) A differential in compensation based in good faith on a local
8 government ordinance providing for a minimum wage different from
9 state law does not constitute discrimination under this section.
10 (d) An individual's previous wage or salary history is not a
11 defense under this section.
12 (e) The employer carries the burden of proof on these defenses.
13 (4) A city, code city, town, county, or political subdivision may
14 not enact a charter, ordinance, regulation, rule, or resolution:
15 (a) Creating a gender pay equity program that alters or amends
16 the requirements of this chapter for any private employer;
17 (b) Providing for local enforcement of the provisions of this
18 chapter; or
19 (c) Requiring private employers to supplement the requirements or
20 benefits provided under this chapter.

21 NEW SECTION. Sec. 4. (1) The legislature finds that equality of
22 opportunity for advancement is key to reducing income disparities
23 based on gender. The legislature further finds that using gender as a
24 factor in advancement contributes to pay inequity.

25 (2) An employer may not limit or deprive an employee of career
26 advancement opportunities that would otherwise be available to the
27 employee but for the employee's gender, including by failing to
28 provide information about career advancement opportunities on the
29 basis of gender.

30 (3) A differential in career advancement based on a bona fide
31 job-related factor or factors that meet the criteria in RCW
32 49.12.175(3)(a) (i) through (iii) (as recodified by this act) does
33 not constitute discrimination within the meaning of this section.
34 Such bona fide factors include, but are not limited to, the factors
35 specified in RCW 49.12.175(3)(b) (i) through (iv) (as recodified by
36 this act).

37 (4)(a) If it is determined that an employer committed a pattern
38 of violations of this section as to an employee or committed a
39 violation of this section through application of a formal or informal

1 employer policy or practice, the employee is entitled to the remedies
2 in this section and in section 8 of this act.

3 (b) Upon complaint by an employee, the director must investigate
4 to determine if there has been compliance with this section and the
5 rules adopted to implement this section. The director, upon
6 complaint, may also initiate an investigation on behalf of one or
7 more employees for a violation of this section and the rules adopted
8 to implement this section. The director may require the testimony of
9 witnesses and production of documents as part of an investigation.

10 (c) If the director determines that a violation occurred, the
11 director shall attempt to resolve the violation by conference and
12 conciliation.

13 (d) If no agreement is reached to resolve the violation and the
14 director determines that the employer committed a pattern of
15 violations of this section as to an employee or committed a violation
16 of this section through application of a formal or informal employer
17 policy or practice, the director may issue a citation and notice of
18 assessment and order the employer to pay to the employee actual
19 damages; statutory damages equal to the actual damages or five
20 thousand dollars, whichever is greater; interest of one percent per
21 month on all compensation owed; payment to the department of the
22 costs of investigation and enforcement; and any other appropriate
23 relief.

24 (e) In addition to the citation and notice of assessment, if the
25 director determines that the employer committed a pattern of
26 violations of this section as to an employee or committed a violation
27 of this section through application of a formal or informal employer
28 policy or practice, the director may order payment to the department
29 of a civil penalty. The violation as to each affected employee
30 constitutes a separate violation.

31 (i) For a first violation, the civil penalty may not exceed five
32 hundred dollars.

33 (ii) For a repeat violation, the civil penalty may not exceed one
34 thousand dollars or ten percent of the damages, whichever is greater.

35 (f) Sections 7 (3), (4), and (5) of this act applies to this
36 section.

37 NEW SECTION. **Sec. 5.** (1) An employer may not:

38 (a) Require nondisclosure by an employee of his or her wages as a
39 condition of employment; or

1 (b) Require an employee to sign a waiver or other document that
2 prevents the employee from disclosing the amount of the employee's
3 wages.

4 (2) An employer may not discharge or in any other manner
5 retaliate against an employee for:

6 (a) Inquiring about, disclosing, comparing, or otherwise
7 discussing the employee's wages or the wages of any other employee;

8 (b) Asking the employer to provide a reason for the employee's
9 wages or lack of opportunity for advancement; or

10 (c) Aiding or encouraging an employee to exercise his or her
11 rights under this section.

12 (3) An employer may prohibit an employee who has access to
13 compensation information of other employees or applicants as part of
14 such employee's essential job functions from disclosing the wages of
15 the other employees or applicants to individuals who do not otherwise
16 have access to such information, unless the disclosure is in response
17 to a complaint or charge, in furtherance of an investigation, or
18 consistent with the employer's legal duty to provide the information
19 and the disclosure is part of the employee's essential job functions.
20 An employee described in this subsection otherwise has the
21 protections of this section, including to disclose the employee's
22 wages without retaliation.

23 (4) This section does not require an employee to disclose the
24 employee's compensation.

25 (5) This section does not permit an employee to violate the
26 requirements in chapter 49.17 RCW and rules adopted under that
27 chapter.

28 NEW SECTION. **Sec. 6.** An employer may not retaliate, discharge,
29 or otherwise discriminate against an employee because the employee
30 has filed any complaint, or instituted or caused to be instituted any
31 proceeding under this chapter, or has testified or is about to
32 testify in any such proceeding, or because of the exercise by such
33 employee on behalf of himself or herself or others of any right
34 afforded by this chapter.

35 NEW SECTION. **Sec. 7.** (1) Upon complaint by an employee, the
36 director must investigate to determine if there has been compliance
37 with RCW 49.12.175 (as recodified by this act), sections 5 and 6 of
38 this act, and the rules adopted under this chapter. The director,

1 upon complaint, may also initiate an investigation on behalf of one
2 or more employees for a violation of RCW 49.12.175 (as recodified by
3 this act), sections 5 and 6 of this act, and the rules adopted under
4 this chapter. The director may require the testimony of witnesses and
5 production of documents as part of an investigation.

6 (2) If the director determines that a violation occurred, the
7 director shall attempt to resolve the violation by conference and
8 conciliation.

9 (a) If no agreement is reached to resolve the violation, the
10 director may issue a citation and notice of assessment and order the
11 employer to pay to the complainant actual damages; statutory damages
12 equal to the actual damages or five thousand dollars, whichever is
13 greater; interest of one percent per month on all compensation owed;
14 payment to the department of the costs of investigation and
15 enforcement; and any other appropriate relief.

16 (b) In addition to the citation and notice of assessment, the
17 director may order payment to the department of a civil penalty. For
18 purposes of a civil penalty for violation of RCW 49.12.175 (as
19 recodified by this act) and section 6 of this act, the violation as
20 to each affected employee constitutes a separate violation.

21 (i) For a first violation, the civil penalty may not exceed five
22 hundred dollars.

23 (ii) For a repeat violation, the civil penalty may not exceed one
24 thousand dollars or ten percent of the damages, whichever is greater.

25 (3) An appeal from the director's determination may be taken in
26 accordance with chapter 34.05 RCW. An employee who prevails is
27 entitled to costs and reasonable attorneys' fees.

28 (4) The department must deposit civil penalties paid under this
29 section in the supplemental pension fund established under RCW
30 51.44.033.

31 (5) Any wages and interest owed must be calculated from three
32 years before the complaint.

33 (6)(a) An employee who has filed a complaint under this chapter
34 with the department may elect to terminate the department's
35 administrative action, thereby preserving any private right of
36 action, by providing written notice to the department within ten
37 business days after the employee's receipt of the department's
38 citation and notice of assessment.

39 (b) If the employee elects to terminate the department's
40 administrative action: (i) The department shall immediately

1 discontinue its action against the employer; (ii) the department
2 shall vacate a citation and notice of assessment already issued by
3 the department to the employer; and (iii) the citation and notice of
4 assessment, and any related findings of fact or conclusions of law by
5 the department, and any payment or offer of payment by the employer
6 of amounts assessed by the department in the citation and notice of
7 assessment, shall not be admissible in any court action or other
8 judicial or administrative proceeding.

9 (c) Nothing in this section limits or affects: (i) The right of
10 any employee to pursue any judicial, administrative, or other action
11 available with respect to an employer; (ii) the right of the
12 department to pursue any judicial, administrative, or other action
13 available with respect to an employee that is identified as a result
14 of a complaint under this chapter; or (iii) the right of the
15 department to pursue any judicial, administrative, or other action
16 otherwise authorized.

17 NEW SECTION. **Sec. 8.** (1) Subject to section 7(6) of this act
18 and subsection (2) of this section, an employee may bring a civil
19 action against an employer for violation of RCW 49.12.175 (as
20 recodified by this act) and sections 4 through 6 of this act for
21 actual damages; statutory damages equal to the actual damages or five
22 thousand dollars, whichever is greater; interest of one percent per
23 month on all compensation owed; and costs and reasonable attorneys'
24 fees. The court may also order reinstatement and injunctive relief.
25 Any wages and interest owed must be calculated from three years
26 before the civil action was instituted.

27 (2) An employee alleging a violation of section 4 of this act is
28 entitled to relief only if the court determines that the employer
29 committed a pattern of violations as to the employee or committed a
30 violation through application of a formal or informal employer policy
31 or practice.

32 NEW SECTION. **Sec. 9.** A violation of this chapter occurs when a
33 discriminatory compensation decision or other practice is adopted,
34 when an individual becomes subject to a discriminatory compensation
35 decision or other practice, or when an individual is affected by
36 application of a discriminatory compensation decision or other
37 practice, including each time wages, benefits, or other compensation

1 is paid, resulting in whole or in part from such a decision or other
2 practice.

3 NEW SECTION. **Sec. 10.** The department shall include notice of
4 the provisions of this chapter in the next reprinting of employment
5 posters.

6 NEW SECTION. **Sec. 11.** The department may adopt rules to
7 implement sections 1 and 4 through 7 of this act and RCW 49.12.175
8 (as recodified by this act).

9 NEW SECTION. **Sec. 12.** RCW 49.12.175 is recodified as a section
10 in chapter 49.--- RCW (the new chapter created in section 13 of this
11 act).

12 NEW SECTION. **Sec. 13.** Sections 1, 2, and 4 through 11 of this
13 act constitute a new chapter in Title 49 RCW."

14 Correct the title.

EFFECT: (1) Modifies the examples of discrimination in career advancement opportunities by changing "failing to announce or provide" opportunities to failing to provide "information" about opportunities and striking the failure to provide training that is under the employer's control.

(2) Provides that a local government may not: Create a gender pay equity program that alters or amends the provisions of the bill for a private employer, provide for local enforcement of the provisions of the bill, or require private employers to supplement the requirements or benefits provided under the bill.

(3) Provides that an employee who files an administrative complaint preserves the right to a private right of action by providing written notice to the Department of Labor and Industries (Department) within 10 days after receiving the citation and notice of assessment. Provides that if the employee terminates the administrative action, the Department must discontinue its action and vacate a citation and notice of assessment. Provides that the citation and notice of assessment and related information are not admissible in another proceeding. Provides that the provisions do not limit or affect other rights.

(4) Changes the look back period for the calculation of wages and interest from four years to three years.

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