
Labor & Workplace Standards Committee

HB 1447

Brief Description: Addressing equal pay.

Sponsors: Representatives Kraft, Muri, Stambaugh, Griffey, Stokesbary, Manweller, Van Werven, Graves, McDonald and Hayes.

Brief Summary of Bill

- Modifies the Equal Pay Act by defining equal work, changing defenses, and making other changes.
- Prohibits retaliation for certain workplace discussions about wages.

Hearing Date: 1/24/17

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.

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. Employees who believe their rights have been violated may file a complaint with the National Labor Relations Board (NLRB).

Summary of Bill:

Equal Pay Act.

The EPA is modified to provide that an employer may not pay employees in the same establishment lower wages than the wages paid to the opposite sex for equal work which requires equal skill, effort, and responsibility, and is performed under similar working conditions. Employees work in the same establishment if the workplaces are in the same geographical region, no larger than a county, taking into account population distribution, economic activity, and the presence of municipalities.

The employer defense is changed to provide that a differential based on the following is not discrimination:

- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production; or
- a bona fide factor considered by the employer, including education, training, performance, or experience. The factor applies only if it is not based on sex, unless the differential is otherwise permitted by law and is reasonably related to the work.

Aggrieved individuals may recover interest, and costs and reasonable attorney's fees, in addition to the balance of the wages. If the pay discrepancy was deliberate and in bad faith, the employee may recover an additional amount equal to the actual damages. The statute of limitations is two years. The misdemeanor is repealed. Also repealed are references to "males" and "females."

Wage discussions.

An employer may not prohibit an employee from inquiring about, discussing, or disclosing the compensation of the employee or of another employee with that employee's consent, or aiding or encouraging another employee to exercise the employee's rights regarding wage discussions. The prohibition does not apply to an employee who has access to other employees' wages as part of their essential job functions and discloses wages to individuals who do not otherwise have access to that information, with some exceptions. An employee is not required to disclose the employee's wages.

An employer may establish, in a written policy provided to all employees, reasonable workplace and workday limitations on the time, place, and manner of wage discussions.

A cause of action is available for an employee who was retaliated against for engaging in protected conduct, except for an employee who initiated, directly or through a representative, proceedings with the NLRB related to the conduct. An employee's failure to adhere to any time, place, and manner limitations is an affirmative defense if the employer took the adverse employment action for failure to adhere to the limitations. The employee may be reinstated and

recover reimbursement for lost wages and work benefits, including interest, statutory damages equal to the actual damages, and costs and attorneys' fees. The statute of limitations is one year.

Appropriation: None.

Fiscal Note: Not requested.

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