
SENATE BILL 5140

State of Washington

65th Legislature

2017 Regular Session

By Senators Cleveland, Keiser, Frockt, Ranker, Conway, Nelson, Takko, Darneille, Hunt, Palumbo, Chase, Saldaña, Lias, Rolfes, McCoy, Kuderer, Billig, Wellman, Mullet, Carlyle, Hasegawa, and Pedersen

Read first time 01/13/17. Referred to Committee on Commerce, Labor & Sports.

1 AN ACT Relating to enacting the equal pay opportunity act by
2 amending and enhancing enforcement of the equal pay act and
3 protecting worker communications about wages and employment
4 opportunities; amending RCW 49.12.175; recodifying RCW 49.12.175; and
5 adding a new chapter to Title 49 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that despite
8 existing equal pay laws, there continues to be an unfair gap and
9 inequality in wages among workers in Washington, especially women.
10 Women working full-time in Washington earn eighty cents for every
11 dollar earned by a man working the same job. The gap in earnings is
12 even more disparate for women of color.

13 According to census bureau data, forty percent of households in
14 the United States rely on a woman as the leading or sole
15 breadwinner. In addition, women hold a significant percentage of
16 minimum wage jobs. Income disparities limit the ability of women to
17 provide for their families, leading to higher rates of poverty among
18 women and children.

19 The legislature finds that in order to establish equality among
20 workers, men and women in the same job must be compensated as equals.
21 The legislature finds that gaps in employee wages is a form of gender

1 discrimination. Policies that encourage retaliation or discipline
2 towards workers who discuss or inquire about compensation prevents
3 workers from moving forward.

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

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 requires otherwise.

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

14 (2) "Department," "director," "employee," and "employer" have the
15 same meaning as defined in RCW 49.12.005.

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

18 EQUAL PAY OPPORTUNITY. (1) Any employer in this state(~~(~~
19 ~~employing both males and females, who shall discriminate in any way~~
20 ~~in the payment of wages as between sexes or who shall pay any female~~
21 ~~a less wage, be it time or piece work, or salary, than is being paid~~
22 ~~to males))~~ who discriminates in providing compensation based on
23 gender between similarly employed(~~(, or in any employment formerly~~
24 ~~performed by males, shall be))~~ individuals is guilty of a
25 misdemeanor.

26 (2)(a) If any ((female)) employee ((shall)) receives less
27 compensation because of being discriminated against on account of
28 ((her sex, and)) gender in violation of this section, ((she shall
29 be)) or if any employee receives less favorable employment
30 opportunities because of being discriminated against on account of
31 gender, that employee is entitled to recover in a civil action the
32 full amount of compensation that ((she)) the employee would have
33 received had ((she)) the employee not been discriminated against. An
34 employee is entitled to recover any actual damages; statutory damages
35 of twice the actual damages or five thousand dollars, whichever is
36 greater; interest of one percent per month on all compensation owed;
37 and costs and reasonable attorneys' fees. In addition, the court may
38 order injunctive relief. In such action, however, the employer shall

1 be credited with any compensation which has been paid to (~~her~~) the
2 employee upon account.

3 (b) A differential in (~~wages between employees~~) compensation or
4 employment opportunities based in good faith on a bona fide job-
5 related factor or factors (~~other than sex shall~~), including
6 education, training, or experience, that is consistent with business
7 necessity and is not based on or derived from a sex-based
8 differential, does not constitute discrimination within the meaning
9 of (~~RCW 49.12.010 through 49.12.180~~) this section.

10 (3) For purposes of this section, "less favorable employment
11 opportunities" means assigning or directing the employee into a less
12 favorable career track or position based on gender. Factors to be
13 considered include, but are not limited to, assigning work less
14 likely to lead to promotion or future opportunities, placement in
15 positions with lower pay or a lower pay scale, or placement in
16 positions with fewer benefits, including less available hours,
17 flexibility, and autonomy.

18 NEW SECTION. Sec. 4. WORKPLACE PRACTICES. (1) An employer may
19 not:

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

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

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

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

29 (b) Asking the employer to provide a reason for the employee's
30 wages or reasons for a lack of employment advancement available to
31 the employee; or

32 (c) Aiding or encouraging an employee to exercise their rights
33 under this section.

34 (3) An employer may prohibit a human resources manager from
35 disclosing the wages of other employees unless the disclosure is
36 otherwise required by law.

37 NEW SECTION. Sec. 5. NO RETALIATION. An employer may not
38 discharge or otherwise discriminate against an employee because the

1 employee has filed any complaint, or instituted or caused to be
2 instituted any proceeding under this chapter, or testified or is
3 about to testify in any such proceeding, or because of the exercise
4 by such employee on behalf of himself or herself or others of any
5 right afforded by this chapter.

6 NEW SECTION. **Sec. 6.** ADMINISTRATIVE ENFORCEMENT. (1) Upon
7 complaint by an employee, the director may investigate to determine
8 if there has been compliance with RCW 49.12.175 (as recodified by
9 this act), sections 4 and 5 of this act, and the rules adopted under
10 this chapter. The director may also initiate an investigation on
11 behalf of one or more employees for a violation of RCW 49.12.175 (as
12 recodified by this act), sections 4 and 5 of this act, and the rules
13 adopted under this chapter. The director may require the testimony of
14 witnesses and production of documents as part of an investigation.

15 (2) If the director has good cause to believe the employer has a
16 pattern of complaints or violations of RCW 49.12.175 (as recodified
17 by this act), the director may require the provision of data to the
18 department, including data identifying the sex, race, compensation,
19 and job classifications of employees. An employer who fails to
20 provide the data required under this subsection within a reasonable
21 time period may not use such data in any appeal to challenge the
22 correctness of any determination by the department following an
23 investigation of a pattern of complaints or violations.

24 (3) If the director determines that a violation occurred, the
25 director may order the employer to pay to the complainant actual
26 damages; statutory damages of twice the actual damages or five
27 thousand dollars, whichever is greater; and interest of one percent
28 per month on all compensation owed. The director may also order
29 payment to the department of a civil penalty of not more than two
30 hundred dollars for a first violation and not more than one thousand
31 dollars for a repeat violation, and payment to the department of the
32 costs of investigation and enforcement, and may order any other
33 appropriate relief.

34 (4) An appeal from the director's determination may be taken in
35 accordance with chapter 34.05 RCW. An employee who prevails is
36 entitled to costs and reasonable attorneys' fees.

37 (5) The department shall deposit civil penalties paid under this
38 section in the supplemental pension fund established under RCW
39 51.44.033.

1 NEW SECTION. **Sec. 7.** CAUSE OF ACTION. An employee may bring a
2 civil action against an employer for violation of section 4 or 5 of
3 this act for actual damages; statutory damages of twice the actual
4 damages or five thousand dollars, whichever is greater; interest of
5 one percent per month on all compensation owed, and costs and
6 reasonable attorneys' fees. The court may also order reinstatement
7 and injunctive relief.

8 NEW SECTION. **Sec. 8.** NOTICE. The department may include notice
9 of the provisions of this chapter in the next reprinting of
10 employment posters.

11 NEW SECTION. **Sec. 9.** RULE MAKING. The department may adopt
12 rules to implement sections 1 through 6 of this act.

13 NEW SECTION. **Sec. 10.** SHORT TITLE. This chapter shall be known
14 and cited as the "equal pay opportunity act."

15 NEW SECTION. **Sec. 11.** CODIFICATION. (1) Sections 1, 2, and 4
16 through 10 of this act constitute a new chapter in Title 49 RCW.
17 (2) RCW 49.12.175 is recodified as a section in chapter 49.---
18 RCW (the new chapter created in this section).

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