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SENATE BILL 5344

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State of Washington

65th Legislature

2017 Regular Session

By Senators Fain, Walsh, Baumgartner, Rivers, and Angel

Read first time 01/20/17. Referred to Committee on Commerce, Labor & Sports.

1 AN ACT Relating to enhancing enforcement of the equal pay act;  
2 amending RCW 49.12.175; adding a new section to chapter 49.12 RCW;  
3 creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** INTENT. The legislature intends to update  
6 the existing Washington state equal pay act, which has not been  
7 modified since 1943, but should reflect the equal status of all  
8 workers in Washington state. The legislature finds that in order to  
9 establish equality among workers, men and women in the same job must  
10 be compensated as equals. Further, although not currently allowed  
11 under federal law, some employers institute various policies to  
12 discourage employees from discussing their wages. The legislature  
13 intends to ensure that employees have the opportunity to exercise  
14 their rights in this area.

15 **Sec. 2.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to  
16 read as follows:

17 ((Any)) (1) An employer in this state(~~(, employing both males and~~  
18 ~~females, who shall discriminate in any way in the payment of wages as~~  
19 ~~between sexes or who shall pay any female a less wage, be it time or~~  
20 ~~piece work, or salary, than is being paid to males similarly~~

1 ~~employed, or in any employment formerly performed by males, shall be~~  
2 ~~guilty of a misdemeanor. If any female employee shall receive less~~  
3 ~~compensation because of being discriminated against on account of her~~  
4 ~~sex, and in violation of this section, she shall be entitled to~~  
5 ~~recover in a civil action the full amount of compensation that she~~  
6 ~~would have received had she not been discriminated against. In such~~  
7 ~~action, however, the employer shall be credited with any compensation~~  
8 ~~which has been paid to her upon account. A differential in wages~~  
9 ~~between employees based in good faith on a factor or factors other~~  
10 ~~than sex shall not constitute discrimination within the meaning of~~  
11 ~~RCW 49.12.010 through 49.12.180)) may not pay any of its employees in~~  
12 ~~the same establishment at wage rates less than the rates paid to~~  
13 ~~employees of the opposite sex for equal work which requires equal~~  
14 ~~skill, effort, and responsibility, and is performed under similar~~  
15 ~~working conditions, except when payment is made pursuant to a~~  
16 ~~differential based on:~~

17 (a) A seniority system;

18 (b) A merit system;

19 (c) A system that measures earnings by quantity or quality of  
20 production; or

21 (d) A bona fide factor considered by the employer other than sex,  
22 such as education, training, performance, experience, or collective  
23 bargaining agreement. Such factor applies only if it is not based on  
24 sex, unless the differential is otherwise permitted by law and is  
25 reasonably related to the work in question.

26 (2) For the purposes of this section, employees are deemed to  
27 work in the same establishment if the employees work for the same  
28 employer at workplaces located in the same geographical region, no  
29 larger than a county, taking into account population distribution,  
30 economic activity, and the presence of municipalities.

31 (3) Any employee receiving less than the wage to which the  
32 employee is entitled under this section may recover in a civil action  
33 the balance of the wages, including interest thereon, statutory  
34 damages equal to the actual damages incurred, and costs and  
35 reasonable attorneys' fees, notwithstanding any agreement to work for  
36 a lesser wage.

37 (4) A civil action to recover wages under this section may be  
38 commenced no later than two years after the cause of action occurs.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 49.12  
2    RCW to read as follows:

3        (1)(a) An employer may not prohibit an employee from inquiring  
4    about, discussing, or disclosing the compensation of the employee or  
5    another employee, or aiding or encouraging any other employee to  
6    exercise his or her rights under this section. This subsection does  
7    not apply in instances where:

8        (i) An employee discloses the compensation of another employee  
9    without that employee's consent; or

10       (ii) An employee who has access to the wage information of other  
11    employees as a part of the employee's essential job functions  
12    discloses the wages of other employees to individuals who do not  
13    otherwise have access to such information, unless the disclosure is a  
14    part of the employee's essential job function and is in response to a  
15    complaint or charge, or in furtherance of an investigation,  
16    proceeding, hearing, or action under this chapter, including an  
17    investigation conducted by the employer.

18       (b) An employer may, in a written policy provided to all  
19    employees, establish reasonable workplace and workday limitations on  
20    the time, place, and manner for inquiries about, discussion of, or  
21    the disclosure of wages. Such limitations must be consistent with all  
22    other state and federal laws and may include prohibiting an employee  
23    from discussing or disclosing the wages of another employee without  
24    the employee's prior permission.

25       (c) Nothing in this subsection requires an employee to disclose  
26    his or her wages. The failure of an employee to adhere to such  
27    reasonable limitations in a written policy is an affirmative defense  
28    to any claims made against an employer under this subsection,  
29    provided that any adverse employment action taken by the employer was  
30    for failure to adhere to such reasonable limitations and not for mere  
31    inquiry, discussion, or disclosure of wages in accordance with such  
32    reasonable limitations in such written policy.

33       (2) Any employee who has been discharged, discriminated, or  
34    retaliated against in the terms and conditions of his or her  
35    employment because the employee engaged in any conduct described in  
36    this section may recover in a civil action reinstatement and  
37    reimbursement for lost wages and work benefits caused by the  
38    violation of this section, including interest thereon, statutory  
39    damages equal to the actual damages, and costs and reasonable  
40    attorneys' fees. However, no employee who initiates or has previously

1 initiated, directly or through a representative, proceedings of any  
2 variety with the national labor relations board related to the  
3 conduct alleged to be a violation of this section may maintain, or  
4 recover any relief whatsoever under, a civil action pursuant to this  
5 section.

6 (3) A civil action brought under this section may be commenced no  
7 later than one year after the cause of action occurs.

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