

HOUSE BILL REPORT

HB 1905

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to including protected classes in the Washington equal pay and opportunities act.

Brief Description: Including protected classes in the Washington equal pay and opportunities act.

Sponsors: Representatives Mena, Senn, Berry, Cortes, Morgan, Ortiz-Self, Ramel, Ramos, Bateman, Reed, Ormsby, Callan, Kloba, Macri, Street, Gregerson, Doglio, Orwall, Bergquist, Goodman, Reeves, Lekanoff, Hackney, Fosse, Pollet, Davis and Simmons.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/10/24, 1/19/24 [DPS].

Brief Summary of Substitute Bill

- Amends the Equal Pay and Opportunities Act to prohibit an employer from discriminating in compensation and career advancement opportunities against similarly employed employees based on the employee's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby, Ortiz-Self and Rude.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 2 members: Representatives Schmidt, Ranking Minority Member; Ybarra.

Staff: Trudes Tango (786-7384).

Background:

The Equal Pay and Opportunities Act.

Under the Equal Pay and Opportunities Act (EPOA), it is a misdemeanor for an employer in the state to discriminate in compensation against similarly employed employees based on the employee's gender. The EPOA also prohibits employers from discriminating, based on gender, in career advancement opportunities against similarly employed employees.

Employees are similarly employed if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions.

It is not considered discrimination if the differential in compensation is based in good faith on a bona fide job-related factor or factors. Bona fide job-related factors may include, but are not limited to:

- education, training, or experience;
- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production; or
- a bona fide regional difference in compensation levels.

The bona fide job-related factor or factors must:

- be consistent with business necessity;
- not be based on or derived from a gender-based differential; and
- account for the entire differential.

The employee may file a complaint with the Department of Labor and Industries (Department). The Department must investigate the complaint and if it determines a violation has occurred, the Director of the Department must attempt to resolve the issue by conference and conciliation. If no agreement is reached, the Department may issue a citation and notice of assessment and order actual damages, statutory damages equal to the greater of actual damages or \$5,000, interest, costs and fees, and other appropriate relief, including civil penalties.

The employee may bring a civil action against the employer, in which case the employee's administrative complaint is terminated. The employee may be entitled to actual damages, statutory damages equal to the greater of actual damages or \$5,000, interest, and costs and reasonable attorneys' fees. The court may also order reinstatement and injunctive relief. An employee alleging a violation of opportunity for advancement is entitled to relief only if the

employer committed a pattern of violations as to the employee or committed a violation through application of a formal or informal employer policy or practice.

The Washington Law Against Discrimination.

The Washington Law Against Discrimination (WLAD) makes it an unfair practice for an employer to discriminate with regard to compensation or other terms or conditions of employment against an employee based on the individual's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

The WLAD applies to employers that employ eight or more persons and does not include any religious or sectarian organization not organized for private profit.

An employee alleging an unfair practice may file a complaint with the Human Rights Commission, which must investigate and attempt to eliminate the unfair practice by conference, conciliation, and persuasion. An employee may also bring a civil cause of action in court to recover actual damages, costs, and reasonable attorneys' fees, and any other appropriate remedy.

Summary of Substitute Bill:

The EPOA is amended to include employees who are members of a protected class. Therefore, it is a violation of the EPOA for an employer to discriminate in compensation or career advancement opportunities against similarly employed employees based on the employee's membership in a protected class. A person may bring a claim under the EPOA based on the person's membership in more than one protected class.

Protected class means a person's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, as those terms are defined under the WLAD.

The Department must develop materials and conduct outreach to individuals and businesses on the new provisions related to discrimination based on protected class.

Substitute Bill Compared to Original Bill:

The substitute bill delays the effective date, requires the Department to conduct educational outreach, and makes it explicit that a person may bring a claim of discrimination based on the person's membership in more than one protected class.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 22, 2024.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2025.

Staff Summary of Public Testimony:

(In support) Women of color experience even more pay disparity. The current equal pay laws would require women with intersectional identities to have to decipher which of their identities was the basis of discrimination. Bringing an action under the Washington Law Against Discrimination is a difficult hurdle. This bill adds protection for workers most impacted and recognizes that intersectionality plays a role in wage inequality. Currently the Department is not allowed under the current equal pay law to investigate claims based on gender and other protected classes.

(Opposed) None.

(Other) The term "protected class" lacks clarity, especially around what sensory disability means and whether the disability exists or is perceived to exist. Employers need time to understand and be prepared. The Department has done two quick sets of rulemaking for the equal pay laws. It would be helpful to have a delayed effective date for more rulemaking and to allow the Department to conduct educational outreach. The Department will need six additional full-time equivalent employees to manage claims.

Persons Testifying: (In support) Representative Sharlett Mena, prime sponsor; Cherika Carter, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Leah White, Washington State Women's Commission; Gabriela Quintana, Economic Opportunity Institute; and Kathleen Barnard, Washington Employment Lawyers Association.

(Other) Rose Gundersen, Washington Retail Association; and Tammy Fellin, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.