

SENATE BILL REPORT

SB 5894

As Reported by Senate Committee On:
Labor & Commerce, January 29, 2024

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: Senators Nobles, Keiser, Frame, Hasegawa, Kuderer, Lias, Lovelett, Nguyen, Randall, Saldaña, Stanford, Trudeau, Valdez and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/15/24, 1/29/24 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Extends the prohibitions on discrimination in wages and career advancement opportunities and the remedies to a person's membership in a protected class.
- Provides that 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 guide dog or service animal by a person with a disability.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5894 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Hansen, MacEwen and Stanford.

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: That it be referred without recommendation.

Signed by Senators Braun and Schoesler.

Staff: Susan Jones (786-7404)

Background: Discrimination in Compensation Based on Gender Prohibited. Under the Washington Equal Pay and Opportunities Act, any employer who discriminates in providing compensation based on gender between similarly employed employees of the employer is guilty of a misdemeanor. If any employee receives less compensation because of discrimination on account of gender in violation of this law, that employee is entitled to certain remedies. 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. Job titles alone are not determinative of whether employees are similarly employed.

Discrimination does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

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

More than one factor may account for the differential. Bona fide factors include:

- 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.

A differential in compensation based in good faith on a local government ordinance providing for a minimum wage different from state law does not constitute discrimination under this section. The employer carries the burden of proof on these defenses.

Discrimination in Career Advancement Opportunities Based on Gender Prohibited. An employer may not, on the basis of gender, limit or deprive an employee of career advancement opportunities that would otherwise be available. A differential in career advancement based on a bona fide job-related factor or factors that meet the above criteria does not constitute discrimination within the meaning of this section. Such bona fide factors described above apply. If it is determined an employer committed a pattern of violations as to an employee or committed a violation through application of a formal or informal employer policy or practice, the employee is entitled to certain remedies.

Retaliation Prohibited. An employer may not retaliate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding, or has testified or is about to testify in any such proceeding, or because of the exercise by such

employee on behalf of the employee or others of any right afforded by the law.

Investigations and Remedies. Upon complaint by an employee, the director must investigate to determine if there has been compliance with the law. The Department of Labor & Industries (L&I), upon complaint, may also initiate an investigation on behalf of one or more employees for a violation. If L&I determines a violation occurred, L&I must attempt to resolve the violation by conference and conciliation. If no agreement is reached and the director determines: (1) a wage discrimination occurred, or (2) the employer committed a pattern of violations of career advancement opportunity discrimination as to an employee or committed a violation through application of a formal or informal employer policy or practice, L&I may issue a citation and notice of assessment and order:

- the employer to pay the employee actual damages, statutory damages equal to the actual damages or \$5,000, whichever is greater, and interest of 1 percent per month on compensation owed;
- the employer to pay the costs of investigation and enforcement; and
- any other appropriate relief.

In addition to the citation and notice of assessment, L&I may order payment to L&I:

- for a first violation, a civil penalty up to \$500; and
- for a repeat violation, a civil penalty up to \$1,000 or 10 percent of the damages or wages, whichever is greater.

Private Right of Action. An employee may bring a civil action against an employer for violations for actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater, and interest of 1 percent per month on all compensation owed; and costs and reasonable attorneys' fees. The court may also order reinstatement and injunctive relief.

The employee must bring a civil action within three years of the date of the alleged violation regardless of whether the employee pursued an administrative complaint. Filing a civil action terminates L&I's processing of the complaint. Recovery of any wages and interest owed must be calculated from four years from the last violation prior to the date of filing the civil action.

An employee alleging a violation related to career opportunities is entitled to relief only if the court determines 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.

Summary of Bill (First Substitute): Prohibitions on discrimination in wages and career advancement opportunities are extended to a person's membership in a 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 guide dog or service animal by a person with a disability as currently defined in state law.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

Makes the act effective on July 1, 2025.

Appropriation: None.

Fiscal Note: Requested on January 15, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill. *The committee recommended a different version of the bill than what was heard.* PRO: Washington's current Equal Pay Act does not help protect other than gender and leaves out many workers. Every worker deserves to be paid equally and fairly without discrimination. Equal pay day comes later for women, persons of color, and others. There are staggering inequalities. The pay gap has widen over time.

This bill helps address pay gaps other than a person's performance. The bill helps build a stronger inclusive community. Identities are multifacitive and this is how people show up in the workplace. The bill takes a comprehensive approach to pay discrimination. There must be a remedy. WLAD is not sufficient to protect people. The Equal Pay Act has worked well and should be applied to all protected classes.

OTHER: We request a little more time to July 1, 2025 to implement the bill. It has been amended over the past years and have done a lot of outreach to the business community on the laws. We have concerns about broadness in definition. For the term sensory, there are five senses and this could be interpreted more broadly. For perceived disabilities, there is no requirement of communication between employer or employee. Using "or" is a lot simpler and more clear. Education and rulemaking is needed for clarity and fairness.

Persons Testifying: PRO: Senator T'wina Nobles, Prime Sponsor; Kathleen Barnard, Washington Employment Lawyers Association; Cherika Carter, Washington State Labor Council, AFL-CIO; Kasi Perreira, Washington State Women's Commission.

OTHER: Tammy Fellin, Department of Labor & Industries; Rose GUNDERSEN, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: No one.