

SECOND SUBSTITUTE HOUSE BILL 1506

State of Washington

65th Legislature

2018 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Senn, Pellicciotti, Slatter, Macri, Peterson, Chapman, Ortiz-Self, Bergquist, Sawyer, Frame, Gregerson, Farrell, Kilduff, Kagi, Dolan, Clibborn, Pollet, McBride, Stanford, Doglio, Appleton, Robinson, Fitzgibbon, Sells, Goodman, Tharinger, Hudgins, Ormsby, Riccelli, Fey, and Pettigrew)

AN ACT Relating to workplace practices to achieve gender pay equity; amending RCW [49.12.175](#); adding a new chapter to Title [49](#) RCW; recodifying RCW [49.12.175](#); and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that despite existing equal pay laws, there continues to be a gap in wages and advancement opportunities among workers in Washington, especially women. Income disparities limit the ability of women to provide for their families, leading to higher rates of poverty among women and children. The legislature finds that in order to promote fairness among workers, employees must be compensated equitably. Further, policies that encourage retaliation or discipline towards workers who discuss or inquire about compensation prevent workers from moving forward.

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

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries, or the director's designated representative.

(4) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

Sec. 3. RCW [49.12.175](#) and 1943 c 254 s 1 are each amended to read as follows:

(1) Any employer in this state ~~((-employing both males and females, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female a less wage, be it time or piece work, or salary, than is being paid to males))~~ who discriminates in any way in providing compensation based on gender between similarly employed ~~((-or in any employment formerly performed by males, shall be))~~ employees of the employer is guilty of a misdemeanor. If any ((female)) employee ((shall)) receives less compensation because of ((being discriminated against)) discrimination ~~on account of ((her sex, and))~~ gender in violation of this section, ~~((she shall be))~~ that employee is entitled to ~~((recover in a civil action the full amount of compensation that she would have~~

~~received had she not been discriminated against)) the remedies in sections 7 and 8 of this act. In such action, however, the employer shall be credited with any compensation which has been paid to ((her)) the employee upon account. ((A differential in wages between employees based in good faith on a factor or factors other than sex shall not constitute discrimination within the meaning of RCW 49.12.010 through 49.12.180.))~~

(2) For purposes of this section, 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.

(3)(a) Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

- (i) Are consistent with business necessity;
- (ii) Are not based on or derived from a gender-based differential; and
- (iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

- (i) Education, training, or experience;
- (ii) A seniority system;
- (iii) A merit system;
- (iv) A system that measures earnings by quantity or quality of production; or
- (v) A bona fide regional difference in compensation levels.

(c) 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.

(d) An individual's previous wage or salary history is not a defense under this section.

(e) The employer carries the burden of proof on these defenses.

NEW SECTION. Sec. 4. (1) The legislature finds that equality of opportunity for advancement is key to reducing income disparities based on gender. The legislature further finds that using gender as a factor in advancement contributes to pay inequity.

(2) An employer may not limit or deprive an employee of career advancement opportunities that would otherwise be available to the employee but for the employee's gender, including by:

- (a) Failing to announce or provide access to career advancement opportunities on the basis of gender; or
- (b) Failing to provide training that is under the employer's control on the basis of gender.

(3) A differential in career advancement based on a bona fide job-related factor or factors that meet the criteria in RCW 49.12.175(3)(a) (i) through (iii) (as recodified by this act) does not constitute discrimination within the meaning of this section. Such bona fide factors include, but are not limited to, the factors specified in RCW 49.12.175(3)(b) (i) through (iv) (as recodified by this act).

(4)(a) If it is determined that an employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the employee is entitled to the remedies in this section and in section 8 of this act.

(b) Upon complaint by an employee, the director must investigate to determine if there has been compliance with this section and the rules adopted to implement this section. The director, upon complaint, may also initiate an investigation on behalf of one or more employees for a violation of this section and the rules adopted to implement this section. The director may require the testimony of witnesses and production of documents as part of an investigation.

(c) If the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(d) If no agreement is reached to resolve the violation and the director determines that the employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the director may issue a citation and notice of assessment and order the employer to pay to the employee actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; payment to the department of the costs of investigation and enforcement; and any other appropriate relief.

(e) In addition to the citation and notice of assessment, if the director determines that the employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application

of a formal or informal employer policy or practice, the director may order payment to the department of a civil penalty. The violation as to each affected employee constitutes a separate violation.

(i) For a first violation, the civil penalty may not exceed five hundred dollars.

(ii) For a repeat violation, the civil penalty may not exceed one thousand dollars or ten percent of the damages, whichever is greater.

(f) Sections 7 (3), (4), and (5) of this act applies to this section.

NEW SECTION. Sec. 5. (1) An employer may not:

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

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

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

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

(b) Asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement; or

(c) Aiding or encouraging an employee to exercise his or her rights under this section.

(3) An employer may prohibit an employee who has access to compensation information of other employees or applicants as part of such employee's essential job functions from disclosing the wages of the other employees or applicants to individuals who do not otherwise have access to such information, unless the disclosure is in response to a complaint or charge, in furtherance of an investigation, or consistent with the employer's legal duty to provide the information and the disclosure is part of the employee's essential job functions. An employee described in this subsection otherwise has the protections of this section, including to disclose the employee's wages without retaliation.

(4) This section does not require an employee to disclose the employee's compensation.

(5) This section does not permit an employee to violate the requirements in chapter [49.17](#) RCW and rules adopted under that chapter.

NEW SECTION. Sec. 6. An employer may not retaliate, discharge, or otherwise discriminate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter.

NEW SECTION. Sec. 7. (1) Upon complaint by an employee, the director must investigate to determine if there has been compliance with RCW [49.12.175](#) (as recodified by this act), sections 5 and 6 of this act, and the rules adopted under this chapter. The director, upon complaint, may also initiate an investigation on behalf of one or more employees for a violation of RCW [49.12.175](#) (as recodified by this act), sections 5 and 6 of this act, and the rules adopted under this chapter. The director may require the testimony of witnesses and production of documents as part of an investigation.

(2) If the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(a) If no agreement is reached to resolve the violation, the director may issue a citation and notice of assessment and order the employer to pay to the complainant actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; payment to the department of the costs of investigation and enforcement; and any other appropriate relief.

(b) In addition to the citation and notice of assessment, the director may order payment to the department of a civil penalty. For purposes of a civil penalty for violation of RCW [49.12.175](#) (as recodified by this act) and section 6 of this act, the violation as to each affected employee constitutes a separate violation.

(i) For a first violation, the civil penalty may not exceed five hundred dollars.

(ii) For a repeat violation, the civil penalty may not exceed one thousand dollars or ten percent of the damages, whichever is greater.

(3) An appeal from the director's determination may be taken in accordance with chapter [34.05](#) RCW. An employee who prevails is entitled to costs and reasonable attorneys' fees.

(4) The department must deposit civil penalties paid under this section in the supplemental pension fund established under RCW [51.44.033](#).

(5) Any wages and interest owed must be calculated from four years before the complaint.

NEW SECTION. **Sec. 8.** (1) Subject to subsection (2) of this section, an employee may bring a civil action against an employer for violation of RCW [49.12.175](#) (as recodified by this act) and sections 4 through 6 of this act for actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; and costs and reasonable attorneys' fees. The court may also order reinstatement and injunctive relief. Any wages and interest owed must be calculated from four years before the civil action was instituted.

(2) An employee alleging a violation of section 4 of this act is entitled to relief only if the court determines that 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.

NEW SECTION. **Sec. 9.** A violation of this chapter occurs when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

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

NEW SECTION. **Sec. 11.** The department may adopt rules to implement sections 1 and 4 through 7 of this act and RCW [49.12.175](#) (as recodified by this act).

NEW SECTION. **Sec. 12.** RCW [49.12.175](#) is recodified as a section in chapter 49.--- RCW (the new chapter created in section 13 of this act).

NEW SECTION. **Sec. 13.** Sections 1, 2, and 4 through 11 of this act constitute a new chapter in Title [49](#) RCW.

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