



LATE TESTIMONY

WOMEN'S CAUCUS

DEMOCRATIC PARTY OF HAWAI'I

February 1, 2016

To: Senator Gilbert Keith-Agaran, Chair
Senator Maile Shimabukuro, Vice Chair and
Members of the Committee on Judiciary and Labor

From: Jeanne Y. Ohta, Co-Chair

RE: SB 2313 Relating to Equal Pay

POSITION: STRONG SUPPORT

The Hawai'i State Democratic Women's Caucus writes in strong support of SB 2313 Relating to Equal Pay. The Caucus supports any amendments to the bill made by the Hawai'i State Commission on the Status of Women.

The fact that the pay gap between men and women has been stagnant and has not continued narrowing, necessitates more effort in ensuring the concept of equal pay for equal work. California passed legislation improving their equal pay statute last year. In addition, approximately 24 states are considering updating their statutes this year.

This measure improves our current equal pay statute. It ensures that employees performing substantially similar work are paid equally; changes the requirement of "equal work" to "substantially similar work;"; revises the "bona fide factor other than sex" defense to require employers to prove a business necessity for using the factor; and ensures that any legitimate, non-sex related factor(s) relied upon are applied reasonably and account for the entire pay differential.

In addition, it prevents employers from retaliating against any employee who discusses her pay with others; because if employees cannot discuss their salaries, they cannot learn that they are being paid less.

Current statutes have "catch alls" which allow loopholes for employers and have been difficult for employees to prove discrimination.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission that we respectfully request that the committee pass this bill.



Hawaii Women's Coalition

Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

LATE TESTIMONY

DATE: February 1, 2016

TIME: 9:30 a.m

PLACE: Conference Room 16

Strong Support of SB 2313 RELATING TO EQUAL PAY.

Aloha, Chair Keith-Agaran, Vice Chair Shimabukuro, and members. The Coalition is in strong support of SB 2313 addressing the issue of equal pay in our state. Consider the following:

Hawaii Fair Pay Act:

What Does it Change?

- Ensures that employees performing substantially similar work are paid equally
- Changes the requirement of "equal work" to "substantially similar work." Ensures that employees performing substantially similar work are paid equally
- Revises the "bona fide factor other than sex" defense to require employers to prove a business necessity for using the factor
- Ensures that any legitimate, non-sex related factor(s) relied upon are applied reasonably and account for the entire pay differential; and
- Eliminates the "same establishment" provision; this requirement prevented employees from being able to compare their salary to that of a coworker who did the same job in a different physical location.

Provisions of The Fair Pay Act: Employer Defenses

Retains prior exceptions for:

- Merit system
- Seniority system
- Quantity of production-based pay
- Bona fide factor other than sex
- Employer also must prove the factor(s): Is/are not based on or derived from sex-based differential in pay;
- Job-related to position and consistent with business necessity;
- Account for the entire differential;
- Applied "reasonably."

Pay Secrecy, Anti-Retaliation Provisions

Employers may not bar employees from, or discriminate or retaliate against employees for:

- Discussing their own wage or wages of others
- Inquiring about another employee's wages; or
- Aiding or encouraging other employees to exercise their rights under the Equal Pay Act

Provisions of The Fair Pay Act:

- No Intent Requirement (same as federal EPA)
- Irrelevant whether employer consciously created these pay differences among employees.
- If a woman earns less than man for substantially similar work and the employer cannot meet its defense burden, there is a violation of the Fair Pay Act.
- Eliminates the same location requirement

- Prohibits retaliation or discrimination against employees who disclose, discuss, or inquire about their own or co-workers' wages for the purpose of exercising rights under the law.

Please pass this important bill out of committee.

Mahalo for the opportunity to testify,
Ann S. Freed Co-Chair, Hawai'i Women's Coalition
Contact: annsfreed@gmail.com Phone: 808-623-5676

LATE TESTIMONY



LATE TESTIMONY

Before the Senate Committee on Judiciary & Labor

DATE: January 29, 2016

TIME: 9:30 a.m.

PLACE: Conference Room 016

Re: SB 2313 Relating to Equal Pay

Testimony of Melissa Pavlicek for NFIB Hawaii

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee:

We are testifying on behalf of the National Federation of Independent Business (NFIB) to respectfully **oppose** this measure. NFIB and our members support equal pay, in that we agree with the principle that an equal day's work deserves an equal day's pay. The existing legal framework already protects employees from wage discrimination based on gender. We do not support the changes proposed in the current version of SB 2313.

Supporters of legislation like SB 2313 often cite statistics that say that on average, women earn 77 cents on the dollar as compared to men. This often leads to the assumption that there must be wide spread wage discrimination by employers. Unfortunately, this statistic is misleading as it does not take into account a number of factors that have no relationship to employer discrimination. According to 2009 report (*see, U.S. Department of Labor, Consad Research Corporation, An Analysis of Reasons for the Disparity in Wages Between Men and Women, January 2009*) prepared for the U.S. Department of Labor, the factors include the fact that a larger percentage of women work in part-time jobs, a larger percentage of women leave the work force at some point for child birth or to care children or elderly relatives, and women tend to value "family friendly" employment policies, including better benefits such as health care, with a trade off in salary. The study concluded that after adjusting for these variables, remaining unexplained wage gap is only between 4.8 percent and 7.1 percent. The report also states that additional non-discrimination factors, for which there is limited data, should reduce the remaining gap even further.

Sufficient Legal Framework:

It is already against the law for an employer to discriminate in setting employee wages based on gender. At the state level we have the Equal Pay Law, which clearly states that no employer shall discriminate based on gender when setting wages. At the federal level, The Equal Pay Act says that employers must pay equal wages to women and men in the same establishment for performing substantially equal work.

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Additional protections are afforded under Title VII of the Civil Rights Act, which prohibits employers with at least 15 employees from discriminating against their employees based on a variety of factors, including gender. In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, which extended the statute of limitations for filing an equal pay lawsuit. We believe these laws already cover the issue of gender wage discrimination, and have not seen any credible evidence that these laws are not sufficient to prevent wage discrimination outside of misleading statistics.

No Due Process for Employers:

SB 2313, as drafted, starts with the presumption that the employer is guilty of wage discrimination, and puts the burden of proof on them to prove their innocence. The bill amends Hawaii's Equal Pay Law to limit three allowable "bona fide" factors for wage differentials to a seniority system, a merit system, and an occupational qualification. This stacks the deck substantially against the employer and seems to turn due process on its head. Small employers will become targets for trial lawyers seeking substantial settlements without even having to prove that a business intentionally discriminated against women.

Lawsuits (threatened or filed) have a substantial impact on small business owners. We have heard story after story of small business owners spending countless hours and sometimes significant sums of money to settle, defend, or work to prevent a lawsuit. And while our members are loath to write a check to settle what they perceive to be a frivolous claim, they express as much, if not more, frustration with the time spent defending against a lawsuit. In the end, time is money to a small business owner.

Subjective Terms:

The amendments proposed in SB 2313 introduce new and largely subjective terms that provide little to no clarity for employers who are trying to make the best business decisions they can to support their families and their employees. For example, the amendments introduce just three "bona fide" employer defenses, which require an employer to prove that a differential in pay is based on one of these three factors. Ultimately, should this bill become law, it would be up to the courts to determine what is and what is not a bona fide decision.

In closing, while we agree with the principle of equal pay, we believe this legislation would ultimately impose enormous burdens and risks on employers; devalue important factors in establishing wages, such as training, education, and skill; and expand litigation opportunities for plaintiffs.

Please defer this bill.

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www.ywcaoahu.org

To: Hawaii State Senate Committee on Judiciary and Labor
Hearing Date/Time: Monday, February 1, 2016, 9:30 a.m.
Place: Hawaii State Capitol, Rm. 016
Re: Testimony of YWCA O'ahu in support of S.B. 2313, Relating to Equal Pay

Good afternoon Chair Keith- Agaran, Vice Chair Shimabukuro, and members of the committee. On behalf of YWCA O'ahu we thank you for the opportunity to share our testimony in **strong support of SB 2313** relating to equal pay.

In Hawaii, women are paid 86 cents for every dollar paid to men, amounting to a yearly wage gap of \$6,624 between men and women who work full time in the state. This gap is larger for women of color, especially Pacific Islander, African American and Latina women.

Hawaii women and families cannot afford discrimination and lower wages. Job creation and economic opportunity are critical issues for women, many of whom continue to struggle with economic insecurity and pay discrimination. Many Hawaii women are breadwinners and are responsible for the economic security of their families. Due to the wage gap, families, businesses and the economy suffer. Lost wages mean families have less money to spend on goods and services that help drive economic growth.

We need public policies such as SB2313 to address the gender wage gap. More than 50 years after passage of the federal Equal Pay Act of 1963, it's clear the pay gap is unlikely to go away on its own. Wages overall are stagnating and the gender wage gap has barely budged over the last ten years. A new study from the Institute of Women's Policy Research shows that women will not see equal pay with men until 2058. Unfortunately, Hawaii has little protection, remedies, and preemptive action laws when it comes to Equal Pay Laws.

SB2313 will not only ensure that employees performing substantially similar work are paid equally, but will also remove stigma and negative consequences of discussing pay. We strongly support and encourage implementing a pay secrecy ban in efforts to eliminate pay discrimination. It is an important and necessary step in eliminating the persisting wage gap in our State.

Thank you for your consideration and for the opportunity to provide testimony on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 4:13 PM
To: JDLTestimony
Cc: [REDACTED]
Subject: *Submitted testimony for SB2313 on Feb 1, 2016 09:30AM*

SB2313

Submitted on: 2/1/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kristi Adachi MD	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 9:37 PM
To: JDLTestimony
Cc: [REDACTED]
Subject: *Submitted testimony for SB2313 on Feb 1, 2016 09:30AM*

SB2313

Submitted on: 2/1/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Campagna	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 2:28 AM
To: JDLTestimony
Cc: [REDACTED]
Subject: *Submitted testimony for SB2313 on Feb 16, 2016 09:30AM*

SB2313

Submitted on: 2/2/2016

Testimony for JDL on Feb 16, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kaelan	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 1:37 PM
To: JDLTestimony
Cc: [Redacted]
Subject: Submitted testimony for SB2313 on Feb 1, 2016 09:30AM
Attachments: SB2313.docx

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SB2313

Submitted on: 2/1/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Oppose	No

Comments: The way that the laws are stated, I believe open the "employee" to more detriments than benefits. And can't see how this would promote a fair pay for anyone and everyone. I also don't like the open aspect of an employer not prohibiting an employee from disclosing the employee's wages - as while the intent is that they disclose their own wages, have had instances where another employee disclosed mine, which I found to be a violation of my rights.

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"An employer shall not prohibit an employee from disclosing the employee's wages, discussing and inquiring about the wages of other employees, or aiding or encouraging any other employee to exercise rights under this section."

I oppose this measure for one reason – it doesn't say that the "employee" can only discuss their own "wages". As the way it is stated currently, the employee could discuss/inquire about other employees wages or take measures to inquire "about the wages of other employees"(and by inquire, should be to the employee they're curious about, not by any other means), and then spend time discussing someone else's "wages" with other's creating a hostile work environment for another employee, not to mention a possible bias against the employee, regardless of whether their pay is more or less then their own. I should know, as this happened to me. Though in my case, it was spread by the Supervisor of my location – leading to parties and actions in my neighborhood that spanned more than just the location I was at, but seemingly through various departments and branches, from the voices I recognized. Not to mention the other case scenario where a new hire, might decide to disclose their wage (may be accurate or not), which is higher then someone who's been with the company for years or any normal new hire. Which might lead to an issue or petition of having other employees pay raised, after hearing something like this, as it doesn't seem fair to them after seeing them work so hard without pay raises for years. (Even after hearing the whole "be glad you have a job" or other items)

Not to mention, if an employer can get away with harassing or creating a hostile work environment for an employee – which I can name a number of "legal", I'm told, actions to, how is something like this going to assist in equal pay for employees, regardless of gender. As previous, supposed confidential polls or questionnaires created for the benefit of improving the work force/place, and is supposedly conducted by an external vendor, isn't as "confidential" as they claim. Where I participated in one for my former employer, just prior to the harassment in my neighborhood escalating, which led to the contents and comments of, shouted out in my neighborhood. It didn't lead to "Fair Pay" or any other benefit for employees – other than a place to vent/gripe/harass/terrorize/etc. (And still ongoing – though I haven't worked for the employer in years; same for many of the ones still actively participating in the harassment) So, if a "confidential" poll isn't confidential; information about other employees pay is gathered and shared with other employees (assuming that the employees are truthful and not just tossing out numbers like "I make \$10k more now" or a new hire with "I make \$15", when the average is around \$10-11; etc); how does sharing something like this help women find equal pay or equality in the workforce?

LATE TESTIMONY

Speaker: Julia Taylor

Bill: SB2313/Relating to Equal Pay

Attending Hearing On: Monday, February 2nd, 2016 at 9:30 AM

Committee: JDL

At the forefront of this bill, statistics supporting equality are stated repeatedly. Many of you have become familiar with these statistics, and they seem to scream support for this bill. However you have also heard testimony against equal pay between the genders, and so, instead of rehashing the statistics listed in the bill, today I represent the unheard rebuttal to the arguments set forth against it.

- 1) Firstly, an argument you may be familiar with is that this bill is bad news for business owners, and therefore bad news for the economy of Hawaii; however, this is contrary to the truth.
 - a. Currently, approximately half the population is making anywhere from 14.2-38.7% less than the white male. With this population instead making 100% of the pay that they have earned for equal work the economy will indubitably improve for the following reasons.
 - i. The Harvard Business Review reports that women make a up a huge portion of the buyers demographic. They cited statistics stating that women actually control \$20 trillion of consumer spending, and represented a growth market that is bigger than the GDP of China and India, combined. If women make more money, they'll be able to gain purchasing power and spend more freely. If women spend more, businesses, whether they are local, family owned, or otherwise, will make

a larger profit and find potential to expand. As a result the economy will be thrust in an upward trajectory.

- b. Laying people off is a serious concern for many, however the fear is unwarranted
 - i. Statistical evidence from AFSCME states that there has never been a clear linkage documented showing that layoffs have occurred from pay equity. Therefore, this fear is invalid and unsubstantiated.

2) People are also concerned that taxes will raise as a result of this bill

- a. The state of Minnesota was enduring difficult economic circumstances at the time in which it implanted a pay equity law, however it was implemented slowly, over the course of a few years, and as a result no tax increases or layoffs occurred, according to AFSCME, the countries largest public service employee union.
- b. In fact, statistics show that taxes may actually drop if this bill is passed
 - i. Many citizens are subordinates of government welfare programs like TANF, or SNAP. These programs are funded by taxes all citizens pay, and CNS news reports that more women than men are on welfare programs.
 - ii. This bill has the potential to wean many women off of welfare programs because it allows them to make their fair share of money, and if these women draw out of these programs, that means less money is needed to run them which therefore could lower taxes.

- 3) Another argument you have heard against this bill is that women should be paid less because they are too busy rearing their children to do there job effectively, or that they must take maternity leave.
- a. It's my belief that mothers and fathers should take equal responsibility in child rearing, however not everyone shares this value, so instead I'd like to make it clear that having children does not compromise a woman's ability to work.
 - i. Statistics from AFSCME state that 60% of women with young children under the age of 5 were employed in 1996, showing that having young children does not impair a female's ability to come to work and do their job effectively. That being said, women should not be penalized for this false fear.
 - b. Another worry employees have is that women are less committed to their jobs because they may have to discontinue work for awhile to take maternity leave
 - i. Firstly, not every female has children, thus not all females should be penalized for this concern by being subject to a lower mandatory starting pay than a man.
 - ii. Furthermore, if a woman is financially penalized for the ability to produce life, that means that women are less financially capable of raising these children, which hurts the female but the future generation
 - iii. Lastly, it is simply morally unjust to punish a woman for giving life to another human.

- 4) Another reason why this bill is so imperative to women are already funneled into lesser paying jobs which makes this bill even more imperative
 - a. Currently, men enter fields that pay higher amounts such as engineering, science, and other fields. Women have been trying to get into these jobs for years, and although the situation is improving, there is still an abundance of sexism that deters women from entering these fields. Resultantly, women are funneled into lesser paying jobs such as teaching, waitressing, and social work, which pay much less than fields dominated by men.
 - b. This bill does not in any way correct this issue, however it does even the playing field by a small amount more, which makes it imperative to become law.
- 5) Lastly, this bill allows women to become financially independent from men, which comes with a myriad of benefits
 - i. The US Census Bureau reported in 2014 that over 80% of homes run by a single parent were led by women. With women making their fair share of money, mothers will be able to provide better for their youth, thus reducing youth exposure to poverty.
 - ii. Secondly, they'll have enough financial stability to escape abusive relationships. For example, a loved one confided in me that their mother stayed in an abusive relationship that endangered herself and her children because she was not financially independent enough to support herself and her children without her spouse. This bill has the power to end that trend.