

HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

March 10, 2020
Rm. 224, 2:45 p.m.

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 1701, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

HCRC supports H.B. No. 1701, H.D. 1.

H.B. No.1701, H.D. 1, if enacted, will amend HRS §§ 378-2.3 and 378-2.4, the Hawai‘i state equal pay law.

Specifically, Section 2 of the bill amends HRS § 378-2.3 in six respects: 1) to prohibit discrimination in compensation on not only the basis sex, but on an expanded number of protected bases, the same protected bases as those protected under HRS § 378-2(a)(1) (race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status); 2) to expand equal pay protections to all employees, not just to employees who work in the same “establishment;” 3) to change the HRS 378-2.3 prohibition against discrimination in compensation for “equal work” to a prohibition against discrimination in compensation for “substantially similar work;” 4) to amend HRS § 378-2.3(b), making it expressly clear that the four affirmative defenses to an equal pay claim that employers can establish must be based on **non-discriminatory** factors; 5) to amend HRS § 378-2.3 by adding new subsections (d) and (e), which provide that employers cannot cure an equal pay violation by reducing the wage rate of a higher-paid employee, and an employee’s agreement to a lower rate of pay is not a defense to an equal

pay claim; and, 6) to amend HRS § 378-2.3 by adding a new subsection (f), to expressly state that a violation of the equal pay law under that section occurs each time an individual is affected by a discriminatory compensation decision or practice, including each time (discriminatory) compensation is paid..

Discussion of the merits of the specific proposed amendments requires understanding the federal Equal Pay Act (EPA) and its relationship to the Title VII prohibition against discrimination with respect to compensation, but it is crucial to recognize the differences between federal law and state equal pay law, HRS §§ 378-2.3 and 378-2.4, and the state fair employment law prohibition against discrimination in compensation, HRS § 378-2(a)(1). The HCRC offers the following discussion to inform and support the legislature's consideration of and deliberation over the proposed amendments to the state equal pay law.

Federal Law: Differences and Interplay Between EPA and Title VII

The Equal Pay Act of 1963 predated Title VII of the Civil Rights Act of 1964.

The EPA prohibits wage discrimination on the basis of sex between employees within any “establishment,” by paying employees of one sex at a lower rate than is paid to employees of the opposite sex for equal work, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

The EPA provides for four affirmative defenses, permitting differences in wages if the differential is caused by: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

Title VII prohibits discrimination in compensation, terms, conditions, or privileges of employment, based on race, color, religion, sex, or national origin.

Key differences between the EPA and Title VII

Scope of protection. The EPA is limited to sex-based differentials in wages. It does not prohibit discrimination in other aspects of employment, nor prohibit discrimination on bases other than sex, as prohibited under Title VII.

Scope of coverage. EPA coverage is limited to employers who are subject to the Fair Labor Standards Act, so the EPA covers employers who have annual sales exceeding \$500,000 or are engaged in interstate commerce, regardless of the number of employees, but excludes certain industries. In contrast, Title VII covers employers of 15 or more employees.

“Equal work” requirement. The EPA prohibits wage discrimination based on sex for equal work, the performance of which requires equal skill, effort, and responsibility. Restrictive federal court interpretations of this “equal work” requirement have made it nigh near impossible for most complainants and plaintiffs to establish prima facie EPA claims. In contrast, Title VII analysis does not require “equal work,” but looks at how similarly situated employees are treated.

Affirmative defenses. The EPA provides for four affirmative defenses, including the defense that a challenged wage differential is based on “any factor other than sex.” There has been disagreement between the federal circuits as to whether this catch-all defense recognizes only legitimate business-related factors other than sex, or literally any factor other than sex. The broad catch-all defense has been interpreted to rule out mixed-motive claims.

A June 12, 1964, amendment to Title VII, known as the Bennett Amendment, imported the EPA defenses into Title VII’s framework for analysis of sex-based discrimination in compensation. There has been no similar amendment to our state fair employment statute.

EPA does not require proof of discriminatory intent. The EPA only requires proof of pay differential between employees of opposite sexes in the same establishment for equal work. Once this is proven, employer has the opportunity to establish one of the four affirmative defenses. If no affirmative defense, an EPA violation has been established. In most Title VII discrimination cases, discriminatory intent is proved by inference, using the basic *McDonnell Douglas* analytical framework that is applied in employment discrimination cases based on circumstantial evidence.

Remedies. The EPA and Title VII have different remedies, with EPA remedies set forth in the Fair Labor Standards Act, not in Title VII.

State Law: Differences and Interplay Between EPA and HRS § 378-2

Hawai‘i enacted its fair employment law in 1963, prohibiting discrimination in hiring, employment, barring or discharging from employment, or otherwise discriminating in compensation, terms, conditions, or privileges of employment. That protection, as subsequently amended, is found at HRS § 378-2(a)(1):

§378-2 Discriminatory practices made unlawful; offenses defined. (a) It shall be an unlawful discriminatory practice:

(1) Because of race, **sex including gender identity or expression**, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, **or otherwise to discriminate against any individual in compensation** or in the terms, conditions, or privileges of employment;

* * * * *

In contrast to the development of federal law, our state equal pay law which was modeled on the federal EPA, did not pre-date the enactment of this comprehensive fair employment law prohibiting discrimination on numerous bases in all aspects of employment, including compensation. The state equal

pay law was first enacted in 2005, 2005 Haw. Sess. Laws Act 35, and amended in 2018, 2018 Haw. Sess. Laws Act 108, to add protection against retaliation and a prohibition against employer inquiries into salary history.

It is important to note that Section 1 of the 2005 Act 35 expressly states, “*It is not the intent of the legislature to affect or diminish the existing, broader protections provided under part I of chapter 378, Hawaii Revised Statutes.*”

The state equal pay law, as amended, is codified at HRS §§ 378-2.3 and 378-2.4:

§378-2.3 Equal pay; sex discrimination. (a) No employer shall discriminate between employees because of sex, by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions. Payment differentials resulting from:

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by quantity or quality of production;
- (4) A bona fide occupational qualification; or
- (5) A differential based on any other permissible factor other than sex[,]

do not violate this section.

(b) An employer shall not retaliate or discriminate against an employee for, nor prohibit an employee from, disclosing the employee's wages, discussing and inquiring about the wages of other employees, or aiding or encouraging other employees to exercise their rights under this section. [L 2005, c 35, §2; am L 2018, c 108, §3]

And,

[§378-2.4] Employer inquiries into and consideration of salary or wage

history. (a) No employer, employment agency, or employee or agent thereof shall:

- (1) Inquire about the salary history of an applicant for employment; or
- (2) Rely on the salary history of an applicant in determining the salary, benefits, or other compensation for the applicant during the hiring process, including the negotiation of an employment contract.

(b) Notwithstanding subsection (a), an employer, employment agency, or employee or agent thereof, without inquiring about salary history, may engage in discussions with

an applicant for employment about the applicant's expectations with respect to salary, benefits, and other compensation; provided that if an applicant voluntarily and without prompting discloses salary history to an employer, employment agency, or employee or agent thereof, the employer, employment agency, or employee or agent thereof, may consider salary history in determining salary, benefits, and other compensation for the applicant, and may verify the applicant's salary history.

(c) This section shall not apply to:

- (1) Applicants for internal transfer or promotion with their current employer;
- (2) Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant's disclosure of non-salary related information or conduct a background check; provided that if a verification or background check discloses the applicant's salary history, that disclosure shall not be relied upon during the hiring process for purposes of determining the salary, benefits, or other compensation of the applicant, including the negotiation of an employment contract; and
- (3) Public employee positions for which salary, benefits, or other compensation are determined pursuant to collective bargaining.

(d) For purposes of this section:

"Inquire" means to:

- (1) Communicate any question or statement to an applicant for employment, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing, verbally, or otherwise, for the purpose of obtaining an applicant's salary history; or
- (2) Conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history; provided that this shall not include informing an applicant, in writing or otherwise, about the proposed or anticipated salary or salary range for the position.

"Salary history" includes an applicant for employment's current or prior wage, benefits, or other compensation, but shall not include any objective measure of the applicant's productivity, such as revenue, sales, or other production reports. [L 2018, c 108 §2]

Differences between the HRS § 378-2 prohibition against discrimination in employment, including compensation, and the equal pay protections of HRS § 378-2.3 and the HRS § 378-2.4 prohibition against employer inquiries into salary history

Scope of protection. The protections of HRS §§ 378-2.3 and 378-2.4 are limited to sex-based differentials in wages and prohibited inquiries into salary history, respectively. They do not prohibit discrimination in other aspects of employment, nor prohibit discrimination on bases other than sex, as prohibited under HRS § 378-2.

Scope of coverage. There is no difference in coverage, as HRS chapter 378, part I, covers employers of one or more employees.

“Equal work” requirement. HRS § 378-2.3, like the federal EPA, prohibits wage discrimination based on sex for equal work, the performance of which requires equal skill, effort, and responsibility. It is unfortunate that the state law is modeled after the EPA in this respect. While restrictive federal court interpretations of the EPA “equal work” requirement are not binding on state courts’ interpretation of state law, they can be considered persuasive guidance, particularly where the state statute does not differ from the federal law in relevant detail. *Furukawa v. Honolulu Zoological Soc.*, 85 Hawai‘i 7, 13 (1997).

HRS § 378-2 analysis does not require “equal work,” but looks at how similarly situated employees are treated.

Affirmative defenses. HRS § 378-2.3, like the federal EPA, provides for four affirmative defenses, including the defense that a challenged wage differential is based on “any factor other than sex.” It is unfortunate that the state law is modeled after the EPA in this respect. While restrictive federal court interpretations of the EPA affirmative defenses are not binding on state courts’ interpretation of state law, they can be considered persuasive guidance, particularly where the state statute does not differ from the federal law in relevant detail. *Furukawa v. Honolulu Zoological Soc.*, 85 Hawai‘i 7, 13 (1997).

As noted above, a June 12, 1964, amendment to Title VII, known as the Bennett Amendment, imported the EPA defenses into Title VII’s framework for analysis of sex-based discrimination in compensation. There has been no similar amendment to our state fair employment statute and, more so, the original 2005 equal pay act, 2005 Haw. Sess. Laws Act 35, § 1, expressly states that it was not the intent of the legislature to diminish existing, broader protections provided under part I of chapter 378 (including § 378-2) HRS, so the affirmative defenses provided for HRS § 378-2.3 claims **are not** imported or applicable to HRS § 378-2 claims of discrimination in compensation.

HRS § 378-2.3 and the HRS § 378-2.4 do not require proof of discriminatory intent. HRS § 378-2.3, like the federal EPA, only requires proof of pay differential between employees of opposite sexes in the same establishment for equal work. Once this is proven, an employer has the opportunity to establish one of the four affirmative defenses. If no affirmative defense is proven, an HRS § 378-2.3 violation has been established.

Similarly, an HRS § 378-2.4 violation is established by evidence of an unlawful inquiry about or consideration of salary history, without proof of discriminatory intent, except that an employer can consider salary history that is disclosed by an applicant voluntarily and without prompting.

In most HRS § 378-2 cases, discriminatory intent is proved by inference, using the basic *McDonnell Douglas* analytical framework that is applied in employment discrimination cases based on circumstantial evidence.

Remedies. There is no difference in remedies for violations of HRS §§ 378-2, 378-2.3, and 378-2.4, as provided in HRS §§ 378-5 and 368-17.

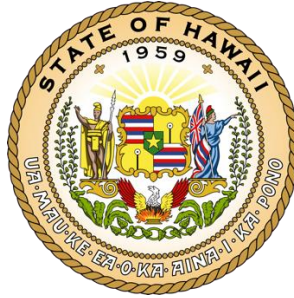
The HCRC supports H.B. No. 1701, H.D. 1.

HRS § 378-2(a)(1) already prohibits discrimination in compensation based on race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status.

If the legislature amends § 378-2.3 to add the protected bases in addition to “sex,” the legislative intent expressed in Section 1 of the bill, at page 2, lines 2-5, is critically important: “ It is not the intent of the legislature to affect or diminish the existing, broader protections provided under part I of chapter 378, Hawaii Revised Statutes.” With that clear expression of legislative intent, the HCRC supports H.B. No. 1701, H.D. 1.

The proposed amendments to HRS § 378-2.3, if enacted, will create relevant differences between the state equal pay statute and the federal EPA. Those differences and the legislature’s statement of its legislative intent will effectively preclude the importation and adoption of restrictive interpretations of the federal EPA.

Enactment of the existing HRS § 378-2.3(b) prohibition against retaliation against employees for disclosing, discussing, or inquiring, or aiding or abetting or encouraging the exercise of rights under the statute, was an important step toward the kind of transparency that will serve to facilitate achievement of pay equity. The proposed amendment of HRS § 378-2.4 to require employer posting and disclosure of pay information and ranges is intended to provide additional transparency. In the absence of such transparency, it is difficult for applicants and employees to have knowledge and evidence of equal pay violations.



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women

Prepared for the Senate Committee on Labor, Culture and the Arts

In Support of HB1701 HD1
Tuesday, March 10, 2020, at 2:45 p.m. in Room 224

Dear Chair Taniguchi, Vice Chair Ihara, and Honorable Members,

The Hawai‘i State Commission on the Status of Women writes in support of HB1701 HD1, which would promote pay equality by conforming statutory prohibitions against wage discrimination with other prohibitions on employment discrimination and requiring employers to disclose wage ranges to employees and prospective employees.

According to a recent report by the U.S. Bureau of Labor Statistic, extreme gender disparities in pay persist and the gender wage gap in Hawai‘i is worsening. Women make 82.6 cents to every dollar earned by men. The wage gap is even more pronounced for women of marginalized identities. The widest disparities exist among earnings of Native Hawaiian and immigrant women (naturalized or undocumented). If trends continue, Hawai‘i will not achieve equal pay until 2100. This trend contributes to higher poverty rates among women of color.

Social science research has also shown that women are often penalized for initiating pay negotiation. The requirement that employers disclose a “pay scale” or comparative information on salary for comparable workers for the position sought within an organization would help alleviate implicit biases and address the negative impact on women who negotiate starting compensation.

Accordingly, the Commission respectfully urges the Committee to pass HB1701 HD1.

Sincerely,

Khara Jabola-Carolus

Statement Before The
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS

Tuesday, March 10, 2020
2:45 PM
State Capitol, Conference Room 224

in consideration of
HB 1701, HD1
RELATING TO EQUAL PAY.

Chair TANIGUCHI, Vice Chair IHARA, and Members of the Senate Labor, Culture and the Arts Committee

Common Cause Hawaii provides comments in support of HB 1701, HD1, which would (1) conform statutory prohibitions against wage discrimination with other prohibitions on employment discrimination; (2) clarify allowable justifications for compensation differentials and remedies for pay disparity; and (3) require employers to disclose wage ranges to employees and prospective employees.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy - one that works for everyone and not just the special interests.

Common Cause Hawaii understands that pay equity is a crucial feature of successful democratic societies and effective democratic governments. Pay equity will reduce barriers that have made it more difficult for everyday Americans, especially women and people of color, to participate in our democracy.

Thank you for the opportunity to comment in support of HB 1701, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

TO: Chair Brian T. Taniguchi; Vice Chair Les Ihara, Jr.; and Committee

FROM: Adrian Hong, President of Island Plastic Bags, Inc.

RE: HB 1701 HD1 RELATING TO EQUAL PAY

POSITION: OPPOSE

Thank you for the opportunity to submit testimony in opposition of HB 1701 HD1. My name is Adrian Hong and I am the president of Island Plastic Bags Inc. (IPB), a second-generation, family business in Halawa Valley that manufactures plastic trash liners and food grade bags. If passed the bill would impose overly-burdensome regulation upon business owners in the name of achieving equal pay.

While IPB supports equal pay, the company is concerned with HB 1701 for the following reasons:

Existing Law. 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.

In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, which extended the statute of limitations for filing an equal pay lawsuit. IPB believes these laws already cover the issue of gender wage discrimination.

No Due Process for Employers. IPB disagrees and opposes the presumption that the employer is guilty of wage discrimination, and puts the burden of proof on them to prove their innocence. The bill further restricts Hawaii's Equal Pay Law that limits "bona fide" factors for wage differentials to a seniority system, a merit system, or production measures. This ties the hands of the employers in any legal flexibility in compensation.

This section could create many frivolous lawsuits against employers. Lawsuits (threatened or filed) have a substantial impact on small business owners.

Burdensome Disclosure of Wage Ranges. This bill would require business owners to provide to job candidates, at the time of hiring and on an annual basis, wage ranges for each employee's each job title. However, this bill does not provide clear definitions of several terms in Section 3. This proposed requirement would add a considerable administrative burden to all businesses, especially small businesses. It also requires that employers disclose this information for "substantially similar" positions, although in many cases, positions do not have clear objective, comparable measurements.

This bill would also require employers to repost a job listing with an updated wage range, if at any time the proposed hourly pay rate or salary does not match the previously posted range. As prospective employees often negotiate their salaries, this requirement could result in added cost to the employer and lengthen the hiring process.

IPB is also concerned that the disclosure of all pay rates in job listings encroaches on an employers' confidential pay information. For the reasons listed above, this bill could result in expensive and protracted litigation.

Due to the concerns listed above, IPB cannot support this bill at this time and respectfully ask that HB 1701 HD1 be deferred. Thank you again for the opportunity to testify. Should you have any questions or comments about my testimony you can contact me by email at ahong@islandplasticbags.com or by phone at 808-484-4046.

Sincerely,

Adrian K. Hong, CPA*

President

Island Plastic Bags, Inc.

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*Not in public practice



Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada
Nelson Ho • Summer Starr

Tuesday, March 10, 2020

Relating to Equal Pay
Testifying in Support with amendment

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports with amendments HB1701 HD1 Relating to Equal Pay**, which would promote pay equality by conforming statutory prohibitions against wage discrimination with other prohibitions on employment discrimination. The measure would also require employers to disclose wage ranges to employees and prospective employees.

When individuals don't receive equal and fair pay everyone suffers. These individuals can't contribute to the community, they can't pay rent, they can't buy local and as a result the whole community suffers. If the female is the head of household and isn't receiving equal and fair pay, then the family suffers, and poverty rates rise. Hawai'i has one of the highest costs of living in the nation and its gender wage gap is increasing, with Native Hawaiian and immigrant women suffering the most.

Knowing what the pay scale is and how much your coworkers are making is essential to remove biases and encourage transparency. Requiring the disclosure to current and prospective employers is crucial for progress. How do we expect individuals and families to be able to exist here if we do not give them the means to do so?

For all these reasons, we strongly urge you to move this bill forward with a **clean effective date**, there is no reason to delay equality.

Mahalo for the opportunity,
Gary Hooser
Executive Director
Pono Hawai'i Initiative

To: Hawaii State Senate Committee on Labor, Culture and the Arts

Hearing Date/Time: March 10, 2020 2:45 PM

Place: Hawaii State Capitol, Rm. 224

Re: Testimony in support of HB1701 HD1

Dear Chair Taniguchi and Members of the Committee,

I write **in support** of HB1701 HD1 that aims to remedy the gender pay gap in Hawaii.

Throughout history, women have been discriminated against and still face many systemic biases. The American Association of University Women reports that Hawaii's gender pay gap ranks 17th in the nation, which is better than most states. However, the pay gap is still an ongoing problem that severely affects certain racial groups, specifically Native Hawaiians and Pacific Islanders.

HB1701 remedies these problems, such as the new subsection g of HRS Section 378-2.3 that would create a gender pay transparency law. Why should a female worker be punished for getting wage information and learning that a male coworker is earning more than her for doing the exact same job? This subsection would allow for the open flow of information so that workers know when there is a discrepancy.

Much of the opposition seems to suggest that this bill would create more litigation, I disagree. So long as you pay your employees an equal and fair wage, and if there is a rational basis as to why someone is paid more, then there would not be any problems. An employee should have the right to know why there is a pay discrepancy. Another argument is that the Lilly Ledbetter Fair Pay Act fixes gender wage discrimination; I say it does not go far enough. The Act extends the statute of limitations so that an employee can sue if there is a pay discrimination. HB1701 would end pay secrecy and allow for pay transparency.

While the bill is certainly a step in the right direction, I do have three suggestions. One *major* suggestion is to remove subsection b of Section 3, lines 3-13 on page 8. Subsection b seems to suggest that if an applicant willingly discloses their salary history without the help of the employer, the employer can then consider salary history when determining the applicant's pay. This portion of the bill seems rather deceiving towards the applicant, as no one other than those who have read the bill would know of this provision. I highly doubt a majority of people spend their time reading the Hawaii Revised Statutes.

The next two suggestions come from the Paycheck Fairness Act. One proposal is to include a penalty for employers when a discrepancy does arise. "The legislation punishes employers for retaliating against workers who share wage information, and puts the justification burden on

employers as to why someone is paid less and allows workers to sue for punitive damages of wage discrimination.”¹ The burden should be on the business to justify why a discrepancy exists. If there is a rational basis to the discrepancy, like a non-discriminatory merit system as the bill suggests, then there is no problem. However, if it is not justified, then it should be ameliorated. The final suggestion is to create a training program for women to better negotiate wages.

This pay gap should be nonexistent if we want to continue to call ourselves the land of the free. Having an arbitrary characteristic to determine your pay is irrelevant. Even outside of our borders, the situation for women around the world is abysmal. In some countries, you still have women that are treated like second class citizens,² female genital mutilation,³ domestic violence issues,⁴ and job discrimination⁵ that disproportionately affect them. We’re limited in what we can do, so it is important that we push these concepts and this philosophy, like equal pay. While it is small, it can transform our nation and hopefully the rest of the world. It’s about the idea of pushing these common sense laws that make sense and bring about change.

We have to be unequivocal with the fact that women’s rights are nonnegotiable and that equality for women is nonnegotiable. Not only is it different, but it is better to have a society where women are equal. Cultural and moral relativism are just not true. It would be preferable to have a system where women aren’t disrespected and put down. Hopefully Hawaii takes that leap forward and these ideas will take hold elsewhere.

Thank you for your time and consideration.

Jarret Pascual

¹ See *The Hill*’s article from 2014, “Senate GOP blocks paycheck bill”

² Regarding how women are treated in Saudi Arabia, see *The Middle East Eye*’s 2018 article, “Detained Saudi women’s rights activists could face death penalty - report”

³ On problems related to female genital mutilation, see *Local Rites and Body Politics* (2007) by Lenore Manderson 285-307

⁴ While common everywhere, this is in reference to Russia’s lack of domestic violence laws and protection, see “Russia: Domestic Violence Bill Falls Short” on *Human Rights Watch*

⁵ In reference to South Korea’s job discrimination issue, where the country is ranked 115 out of 149 countries by the World Economic Forum, see *CNN*’s article, “South Korea’s glass ceiling: the women struggling to get hired by companies that only want men”

HB-1701-HD-1

Submitted on: 3/7/2020 1:27:51 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jean Evans	Individual	Support	Yes

Comments:

HB-1701-HD-1

Submitted on: 3/7/2020 5:25:13 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

HB-1701-HD-1

Submitted on: 3/7/2020 5:30:22 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride at Work - Hawaii	Testifying for Pride @ Work - Hawaii	Support	No

Comments:

Tuesday, March 10, 2020 at 2:45 PM
Conference Room 224

Senate Committee on Labor, Culture and the Arts

To: Senator Brian Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair

From: Gail Lerch
EVP, Human Resources and General Services

Re: **Comments on HB 1701, HD1
Relating To Equal Pay**

My name is Gail Lerch, Executive Vice President, Human Resources and General Services at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I write to provide comments on HB 1701, HD1 that conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination, clarifies allowable justifications for compensation differentials and remedies for pay disparity, and requires employers to disclose wage ranges to employees and prospective employees.

HPH supports equal pay and prohibitions against wage discrimination. Our organization takes deliberate steps to ensure that our employees are not subject to wage or position discrimination based on race, gender, age, sexual orientation and all protected categories. Hawai'i Pacific Health is proud of our record of promoting women into leadership as well as supervisory positions within our hospital system.

However, HPH is concerned that this bill will impose overly burdensome regulations upon businesses. It is already unlawful 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 states that employers must pay equal wages to women and men in the same establishment for performing substantially the same work. In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, which extended the statute of limitations for filing an equal pay lawsuit. Thus, we believe laws already exist to cover the issue of wage discrimination that this bill seeks to address.

We also disagree with and oppose the presumption that the employer is guilty of wage discrimination and places the burden of proof on employers to prove their innocence. This could potentially tie the hands of the employers in any legal flexibility in compensation and create many frivolous lawsuits against employers. Lawsuits, whether threatened or filed, have a substantial impact on small business owners.

The definition of “substantially similar work” is also a concern. The definition provided in the bill is too broad for businesses to understand and comply with. In many instances, especially within the health care field, positions do not have clear objective comparable measurements.

The requirement in HB 1701, HD1 that employers must disclose wage ranges and the factors considered in setting salary levels to prospective employees, and then annually provide that information upon request could potentially lengthen the hiring process as prospective employees often negotiate their salaries and benefits.

The salary disclosure requirement may also create morale issues among employees. There are a number of factors in determining pay differentials between employees that are not based on gender or race based factors. Salary differentials between employees within and across different organizations are nuanced and difficult to capture in a simple reporting of salary ranges by job title. Requiring employers to disclose the pay of their entire workforce to all employees and job applicants could also be viewed as an invasion of privacy by many employees. For various reasons, there are likely to be many employees in the organization who do not want their pay rates to be disclosed to other co-workers and between other employers who might be competing for the same pool of applicants. Therefore our concern on the effect release of such information through a survey result could result in serious morale issues experienced by employees.

Based upon the concerns expressed above, HPH is unable to fully support the measure at this time.

Thank you for the opportunity to testify.

HB-1701-HD-1

Submitted on: 3/8/2020 8:12:58 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Taniguchi and Members of the Committee on Labor, Culture and the Arts,

I am writing in support of HB1701 HD1.

HB1701/SB2253 will provide pay transparency by requiring employers to make salary range information available to employees and job candidates, which will help employers manage their pay expenses and encourage pay equity.

- Gender pay gap penalizes all households in Hawaii, since many households rely on the paychecks of more than one household member. Gender pay gap penalizes children excessively, because many children reside in female-headed households. If the \$8,149 annual gender pay gap is eliminated, a working woman in Hawaii would have enough money to purchase 11.2 additional months of child care and 5.5 additional months of rent.[\[1\]](#)
- Some of the language from the Paycheck Fairness Act[\[2\]](#) passed by the US House of Representatives in 2019 has been included to make Hawaii's consistent when that Act passes the US Senate and becomes law.

Please pass this bill.

Mahalo,

Caroline Kunitake

[\[1\]](#) National Partnership for Women and Families – What's the Wage Gap in the States, September 2018, <http://www.nationalpartnership.org/our-work/workplace/4-2018-wage-gap-map.html>

[\[2\]](#) US Congress – Paycheck Fairness Act,

<https://www.congress.gov/bill/116th-congress/house-bill/7/text>



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House Committee on Labor, Culture, and Arts
Monday, March 9, 2020, 2:45 pm
Hawaii State Capitol, Room 224

Comments Regarding HB 1701 HD1, Relating to Equal Pay

To: The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following comments on HB 1701 HD1, Relating to Equal Pay.

This bill conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination, clarifies allowable justifications for compensation differentials and remedies for pay disparity, and requires employers to disclose wage ranges to employees and prospective employees.

While we understand and support the intent of this bill, we have concerns about the potential unintended consequences. The bill would cause another burden on businesses that are already struggling to do business in Hawaii, adding another layer of government oversight upon what the business can pay an employee. Further, while the intent of this bill is to protect employees from pay disparity, it may have the added effect of creating a difficult work environment, as employers are required to disclose pay ranges.

Thank you for the opportunity to provide comments on this issue.

HB-1701-HD-1

Submitted on: 3/8/2020 11:28:53 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Hawaii Women's Coalition	Support	Yes

Comments:

Dear Chair Taniguchi, Vice Chair Ihara, and Members of the Committee,

The Hawaii Women's Coalition writes in support of H.B. 1701 HD1, to establish Hawaii as a leader in the field of pay equity, as Hawaii has led the way in civil rights. The gender pay gap has worsened in Hawaii: the median annual earnings for women were 84 percent of men's earnings in Hawaii in 2015 and 83 percent in 2018. Hawaii is considered as a state with moderate equal pay protection. California, Colorado, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, and Washington are considered as states with strong equal pay protection. While passage of Act 108 in 2018 that became effective January 1, 2019 was a step towards ensuring pay equity, this bill would increase pay transparency and provide a strong equal pay protection with a minimal cost or disruption to employers.

Research shows that workers stay longer and are more productive when working for companies which treat them with dignity. A recent Harvard-Berkeley study showed that pay inequality decreased worker attendance, cooperation, and output.

Salary transparency and attempts at pay equity will attract millennials and make businesses more attractive in a competitive market. Being up-front about wages saves businesses time so that they are not interviewing candidates that will eventually turn them down. In addition to fairness, this is also about efficiency. Salary ranges help employers control their pay expenses and ensure pay equity among employees. It is critical that employers have rational explanations for why they pay their employees a certain rate, and defined salary ranges help accomplish that.

The gender pay gap is found across ethnic/racial groups, age groups, educational groups, and occupational groups. Native Hawaiian and Pacific Islanders women's median annual earnings were 62 percent of white men's earnings. It also penalizes all

households in Hawaii, since many households rely on the paychecks of more than one household member. It penalizes children excessively because many children reside in female-headed households. If the \$8,149 annual gender pay gap is eliminated, a working woman in Hawaii would have enough money to purchase 11.2 additional months of child care and 5.5 additional months of rent.

Thank you for your support for this important measure to promote fairness and equity in the workplace.

Sincerely,

Hawaii Women's Coalition

HB-1701-HD-1

Submitted on: 3/8/2020 11:38:25 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Testifying for AAUW of Hawaii	Support	Yes

Comments:

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of H.B. 1701 HD1, which directly confronts the gender pay gap in Hawaii. This is an issue which hurts not only women but families. Approximately 52,000 Hawaiian households survive on female wages, and 17% of these families are struggling with incomes below the poverty level.[\[1\]](#) If the \$8,149 annual gender pay gap is eliminated, a working woman in Hawaii would have enough money, on average, to purchase 11.2 additional months of child care and 5.5 additional months of rent.[\[2\]](#) To make the situation worse, the gender pay gap has widened in Hawaii. The median annual earnings for women were 84% of men's earnings in Hawaii in 2015 (thus 16% gender pay gap) and were 83% in 2018 (thus 17% gender pay gap), barely above the 80% national average.[\[3\]](#)

Not only would this bill provide stronger equal pay protection for the employees, it would help businesses better manage their pay expenses, recruit and retain employees, and potentially improve employee morale.

- Research shows that workers stay longer and are more productive, when working for companies which treat them with dignity. A recent Harvard-Berkeley study showed that pay inequality decreased worker attendance, cooperation, and output.[\[4\]](#)
- Salary transparency and attempts at pay equity will attract millennials; will be more attractive in a competitive market.[\[5\]](#)
- Being up front about wages saves businesses time so that they are not interviewing candidates that will eventually turn them down. In addition to fairness, this is also about efficiency.[\[6\]](#)
- Salary ranges help employers control their pay expenses and ensure pay equity among employees. It is critical that employers have rational explanations for why they pay their employees a certain rate, and defined salary ranges help accomplish that.[\[7\]](#)

It's great to see that this bill also addresses the concerns some members of the business community had by clarifying the section on retaliation against employees who

disclose or discuss other employees' salary to protect confidential information by including language from the 2019-2020 Paycheck Fairness Act passed by the U.S. House of Representatives.

Hawaii is considered as a state with only moderate equal pay protection. Nine other states (California, Colorado, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, and Washington) have equal pay protection much stronger than the state of Hawaii.^[8] Members of AAUW of Hawaii believe Hawaii can do better and this bill's measures can succeed with a minimal cost or disruption to employers. We believe we can establish Hawaii as a leader in the field of pay equity, as Hawaii has led the way in civil rights.

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 650 active members with over 3800 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Please pass this important measure and mahalo.

Younghee Overly

Public Policy Chair, AAUW of Hawaii

publicpolicy-hi@aauw.net

[1] National Partnership for Women and Families – Hawaii Women and the Wage Gap April 2017, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-hi-wage-gap.pdf>

[2] National Partnership for Women and Families – What's the Wage Gap in the States, September 2018, <http://www.nationalpartnership.org/our-work/workplace/4-2018-wage-gap-map.html>

[3] National Partnership for Women and Families – America's Women and the Wage Gap, September 2018, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>; National Partnership for Women and Families – Hawaii Women and the Wage Gap April 2017, <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-hi-wage-gap.pdf>

[4] Emily Breza, Supreet Kaur & Yogita Shamdasanani 2016 “The Morale Effects of Pay Inequality,” *NBER Working Papers*, National Bureau of Economic Research

[5] Forbes, <https://www.forbes.com/sites/jessicalutz/2017/11/30/millennials-are-slowly-killing-salary-secrecy-and-thats-a-good-thing/#67a129946015>

[6] Glassdoor, “Is Salary Transparency More Than a Trend”,
https://www.glassdoor.com/research/app/uploads/sites/2/2015/04/GD_Report_2.pdf

[7] Society for Human Resource Management, “How to Establish Salary Range”,
<https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/howtoestablishsalaryranges.aspx>

[8] AAUW Policy Guide to Equal Pay in the States,
<https://www.aauw.org/resource/state-equal-pay-laws/>

HB-1701-HD-1

Submitted on: 3/8/2020 2:26:51 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

I am in support of equal pay as described in this bill



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Executive Officers

Joe Carter, Coca-Cola Bottling of Hawaii, *Chair*
Charlie Gustafson, Tamura Super Market, *Vice Chair*
Eddie Asato, The Pint Size Corp., *Secretary/Treas.*
Lauren Zirbel, HFIA, *Executive Director*
John Schlif, Rainbow Sales and Marketing, *Advisor*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:

Committee on Labor, Culture, and the Arts
Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 10, 2020
TIME: 2:45pm
PLACE: Conference Room 224

RE: HB1701 HD1 Relating to Equal Pay

Position: Comments

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA has concerns about certain language in this measure. While this measure makes some effort to define the term “substantially similar work” this language is still very open to interpretation. Inserting this type of legally vague terminology into statute will leave employers open to a range of frivolous lawsuits that can be very costly and will not further the goals of this measure.

The section of this measure mandating that employers provide wage ranges may not be feasible under certain circumstances. The hiring process often involves adjusting the exact job specifications based on a number of factors, most importantly the individual eventually hired for the position. It will be impossible for many employers to list an accurate wage range for a position that may change for an employee they haven’t hired yet.

We thank you for the opportunity to testify.

HB-1701-HD-1

Submitted on: 3/9/2020 11:37:58 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

Senate Committee on Labor, Culture and The Arts

Hearing Date: Tuesday, March 20, 2020

Time & Room: 2:45pm, Rm. 224

Re: Testimony in support of HB 1701, HD1:RELATING TO EQUAL PAY

Dear Senator Brian Taniguchi, Chair Senator Les Ihara, Jr., Vice Chair and members of the committee:

The gender pay gap in Hawaii increased between 2015 and 2018: the median annual earnings for women were 84 percent of men's earnings in 2015 and 83 percent in 2018. Native Hawaiian and Pacific Islanders women's median annual earnings were 62 percent of white men's earnings in 2018.

Passage in 2018 of Act 108 was a step towards ensuring pay equity. The provisions of that Act provide moderate equal pay protection to Hawaii's workers.

Please pass HB-1701, HD1 to strengthen Act 108. Pass this bill to provide strong equal pay protection and establish Hawaii as a leader in pay equity, as we have been in civil rights.

Passage of HB-1701, HD1 will:

- Increase pay transparency and pay equity by mandating disclosure of wage ranges available to employees and job candidates.
- Help employers manage their pay expenses:
- Clarify the factors that can be used to justify differences in compensation based on seniority, merit, or other non-discriminatory purposes;
- Lead to decreased employee turnover and increased efficiency; and
- Make the business more attractive to prospective employees in a competitive market;

All with a minimal cost or disruption to employers.

Thank you for the opportunity to testify.

Janet Morse
AAUW Hawaii member
Kailua, Oahu

HB-1701-HD-1

Submitted on: 3/9/2020 12:08:22 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Justin Salisbury	Individual	Support	No

Comments:

Mahalo to Chair Taniguchi for bringing this bill to a hearing. I support this bill but am **REQUESTING AN AMENDMENT.**

I think this bill is excellent, but I respectfully request that some additional language be added to this bill in order to make sure that it truly creates the full spectrum of equal pay protections that it is intended to provide.

I respectfully request that the Committee add the contents of House Bill 693 and Senate Bill 2468, Senate Draft 2.

HB 693 will repeal the exclusion of workers with disabilities from the minimum wage protections. As Section 387-9 of the Hawaii Revised Statutes is currently written, it explicitly authorizes wage discrimination against workers with disabilities.

SB 2468 SD 2 will stop requiring that sheltered workshops, or "Community Rehabilitation Programs" (CRP's), use this blatantly discriminatory statute to use extremely cheap labor, such as workers earning 7 cents per hour, to qualify for state contracting preference.

I want the State to get a good deal on its contracts, but I don't want people with disabilities to be exploited in the process. I know that my tax dollars are being used to support many welfare programs, which pay the real cost of living for the workers with disabilities who are being paid wages like 7 cents per hour in sheltered workshops. The employees' cost of living is shifted more heavily onto federally-funded welfare programs rather than state-funded contracts, but the taxpayers do not get a deal when the State

takes this deal. Furthermore, this State contracting practice contradicts our status as an Employment First State, as proclaimed repeated by the Governor.

This measure builds on the pay equity provisions of Act 108, Session Laws of Hawaii 2018, by prohibiting discrimination in compensation based on race, sex, including gender identity or expression, sexual orientation, age, religion, color ancestry, **DISABILITY**, marital status, arrest and court record, or domestic or sexual violence victim status for substantially similar work.

Workers with disabilities are human beings and should be paid like other human beings. If a minimum wage excludes a subset of the population, then it is not really a minimum wage at all. This issue is an equal pay issue, and, with the Committee's support, this bill can extend equal pay protections to workers with disabilities.

Mahalo for bringing this bill to a hearing and considering my proposed amendment.



**Testimony to the Senate Committee on Labor, Culture, and the Arts
Tuesday, March 10, 2020 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: HB 1701 HD1, RELATING TO EQUAL PAY

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") supports equal pay; however, the Chamber **has concerns** with HB 1701 HD1, which would conform statutory prohibitions against wage discrimination with other prohibitions on employment discrimination. This bill would also clarify allowable justifications for compensation differentials and remedies for pay disparity and would require employers to disclose wage ranges to employees and prospective employees.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber has concerns that this bill would impose overly burdensome and unnecessary regulations upon companies. 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, and Hawaii Administrative Rule Section 12-46-105(a) states that "Wages shall not be related to or based on the sex of the employee." 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. 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.

We also disagree and oppose the presumption that the employer is guilty of wage discrimination and puts the burden of proof on them to prove their innocence. This could potentially tie the hands of the employers in any legal flexibility in compensation and create many frivolous lawsuits against employers. Lawsuits, whether threatened or filed, have a substantial impact on businesses, especially small and local companies. We've heard story after story about small business owners who have had to spend countless hours and sometimes even significant sums of money to settle, defend or work to prevent a lawsuit.



The Chamber also has concerns regarding how this bill defines the “substantially similar work” and “compensation” provisions. While this bill attempts to provide definitions, we believe that they are still too broad for business owners to fully comply with and understand. Additionally, the absence of limiting the comparison to jobs that are at the same establishment could be problematic. Job markets are not the same in Honolulu compared to a neighbor island, and therefore wages would vary. For example, a nurse working at a trauma unit in Honolulu would most likely have different responsibilities and receive a different wage than a counterpart on a neighbor island. Despite both occupations being “substantially similar” in title, in reality, these jobs are not comparable.

Finally, the Chamber would like to raise concerns about the requirements for business owners to provide the pay scale for a position to an applicant applying for employment, and the annual requirement to provide an employee with the wage range for their job title, and jobs that are substantially similar. Requiring employers to provide annual wage ranges could also lead to issues with morale and wage compression amongst employees within the same business. Employees who might be near the bottom of the scale will want to be paid near the higher end when learning of their respective pay range, without considering the many varying factors that contributed to that range. This requirement will be very burdensome and costly to employers and note that as prospective employees often negotiate their salaries, we have concerns that this requirement could result in longer hiring processes for employers.

While the Chamber supports closing the gender pay gap, due to the concerns listed above, we cannot support this bill at this time. Thank you for the opportunity to testify.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law & Economic Justice
In Support of HB 1701, HD1 – Relating to Equal Pay
Senate Committee on Labor, Culture and the Arts
Tuesday, March 10, 2020, 2:45 PM, conference room 224

Dear Chair Taniguchi, Vice Chair Ihara, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **HB 1701, HD1**. We commend you for passing Hawai'i's equal pay bill in 2018, which took strides to reduce the gender wage gap in our state. We urge you to continue making improvements by passing this bill this year.

According to the U.S. Bureau of Labor Statistics, Hawai'i women had median usual weekly earnings of \$797 in 2018, or 82.6 percent of the \$965 median usual weekly earnings of their male counterparts.ⁱ Unfortunately, that is a *decrease* of 10 percentage points from Hawai'i women's earnings peak at 92.8 percent of men's earnings in 2014.ⁱⁱ

If women earned the same pay as comparable men, not only would their pay increase, but poverty for women and their children would fall, too. The poverty rate among working women in Hawai'i would decrease by more than half, from 5.4 to 2.5 percent,ⁱⁱⁱ and the poverty rate for families headed by working single mothers would drop by close to half, from 21.3 to 10.7 percent.

In addition, if working women in Hawai'i received equal pay, 61.2 percent of working mothers would have increased earnings and the poverty rate among children of working mothers would fall by more than half, from 10.9 percent to 4.5 percent.

We can and should find ways to better ensure that our women and their children can find economic security in the Aloha State. Modest and common-sense proposals, such as requiring employers to release salary ranges to employees and job candidates, as contained within this bill, would move us closer towards that goal.

We appreciate your consideration of this testimony.

ⁱ <https://www.bls.gov/opub/reports/womens-earnings/2018/home.htm>

ⁱⁱ <https://www.bls.gov/opub/reports/womens-earnings/archive/highlights-of-womens-earnings-in-2014.pdf>

ⁱⁱⁱ <https://iwpr.org/wp-content/uploads/2017/05/C457.pdf>

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
Members, Committee on Finance

From: Rowena Buffett Timms, Executive Vice President & Chief Administrative Officer, The Queen's Health Systems
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: March 9, 2020

Hrg: House Committee on Finance Hearing; Tuesday, March 10, 2020 at 2:45 P.M. in Room 224

Re: **Support for the intent with comments on HB 1701 HD1, Relating to Equal Pay**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to testify in support for intent with comments on HB 1701 HD1, Relating to Equal Pay. The measure would amend the list of protected classes to under the Hawaii equal pay statute for consistency with state statute that prohibits employment discrimination; clarifies the factors utilized by employers in determining compensation; require disclosure of salary range information, and utilizes the term "substantially similar work" in state non-discrimination statutes.

Queen's fully understands and appreciates the efforts of the Legislature to ensure that women and men are paid equally. We appreciate the opportunity to provide comments on the bill and clarify impacts to our system.

The bill clarifies the factors utilized to define substantially similar work. "Skills" is defined to mean the experience, ability, education, and training required to perform the job. However, this definition does not take into account the comparison between the experience required for the job versus what a particular candidate brings to the job. This difference could be broad and is a factor that impacts salary variation. For Queen's, a majority of our non-bargaining positions have broad salary ranges to take into consideration the differences in experience as well as future growth opportunities.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

The bill requires disclosure to an applicant the factors the employer considers in setting salary levels and upon hire, the employer is required to provide the wage range for the employee's job title and for jobs that are substantially similar. If candidates to a particular position are provided the full salary range, it will likely cause false expectations that candidates could come in at the top range. Consideration should be given to providing the portion of the range that the candidate's level of experience, ability, education, and training most accurately reflects the effort and responsibility required in performing the job. There are many factors that are assessed when determining a new hire rate and it is done without consideration to gender or race, but merely based on education and work experience that he/she can bring to the job.

The measure allows for disclosure of all hourly rates and salary ranges in all job listings, which may negatively impact morale among employees. At Queen's, we reference purchased national and local salary surveys that include benchmark jobs in which we employ. Through market data, we can compare multiple surveys and establish an average. From this information a determination can be made as to where a position may fit in the existing set of salary ranges. This market data can change from year to year and there may be times it is necessary to move a position to a higher or lower range based on the information.

Thank you for the opportunity to testify on this measure.



Testimony to the Senate COMMITTEE ON LABOR, CULTURE AND THE ARTS

**Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair
Tuesday, March 10, 2020 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: HB 1701 HD1, RELATING TO EQUAL PAY

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The mission of SHRM Hawaii is to advance the Human Resource profession's capacity to drive workplace excellence within business, education, government, and communities in the State of Hawaii. We serve our professionals through building knowledge, expanding experiences, facilitating the development of innovative ideas, and exchanging best practices for success to serve human resource (HR) professionals and advance the human resource profession.

SHRM Hawaii serves nearly 800 members statewide and provides comprehensive information and tools to human resource professionals to enable them to make informed decisions on behalf of both their organization and the employees. We believe that human resource management is a critical component to the success of every business as the HR professional is responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses' most valuable asset: their people. This is accomplished through a statewide effort to partner with and support our members, while still recognizing the individual needs of organizations on each island.

First, as professionals administering employee discrimination laws, we respect and honor all of our employees. Existing state and federal laws prohibit pay discrimination against any employee based on a protected status. There is no parallel law in federal statutes which expand equal pay protections for every protected category. Broadly implementing such expansions would dilute the importance of gender bias protections in employee compensation laws, a historical fact that prior legislation of this body has specifically addressed. If this body believes expanded employment law protections are necessary, a separate statute with carefully drafted definitions should be drafted and discussed.



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

SHRM Hawaii has concerns with HB 1701 HD1, which would make the definition of equal pay inconsistent with federal law, eliminate non-discriminatory justifications for compensation differentials, and saddle employers with obligations for conducting massive and costly compensation analyses and then disclosing comparable position wage ranges to employees and prospective employees. SHRM Hawaii has concerns that this bill would impose overly burdensome and unnecessary regulations upon businesses, small and large, while accomplishing very little with respect to solving gender pay gaps beyond those remedies and protections already in place.

At the state level we have the Equal Pay Law, which clearly states that no employer shall discriminate based on gender when setting wages. Indeed, Hawaii Administrative Rule Section 12-46-105(a) states that “Wages shall not be related to or based on the sex of the employee.”

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. 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.

We also disagree and oppose the presumption that the employer is guilty of wage discrimination and puts the burden of proof on them to prove their innocence. This could potentially tie the hands of the employers, legally limiting their flexibility in compensation and sparking many frivolous lawsuits against employers. Lawsuits, whether threatened or filed, have a substantial impact on businesses, especially small and local companies. We’ve heard story after story about small business owners who have had to spend countless hours and sometimes even significant sums of money to settle, defend or work to prevent a lawsuit, oft times diminishing the employer’s financial capacity for creating and sustaining good paying jobs.

SHRM Hawaii also has serious concerns regarding how this bill defines the “substantially similar work” and “compensation” provisions. While this bill attempts to provide definitions, we believe they are still too broad for business owners to fully comply with and understand. Additionally, the absence of limiting comparisons to jobs that are at the same establishment will also prove to be problematic. Job markets are not the same in Honolulu compared to neighbor islands, where wages are reasonably expected to vary in both directions. For example, a nurse working at a trauma unit in Honolulu would most likely have different responsibilities and receive a different wage than a counterpart on a neighbor island. Despite both occupations being “substantially similar” in title, in reality, these jobs are far from comparable.

Finally, SHRM Hawaii would like to raise concerns about the requirements for business owners to provide pay scales for positions applicants apply to for employment, and the annual requirement to provide employees with wage ranges for their job title, and jobs that are substantially similar.



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

Requiring employers to provide annual wage ranges will surely create irreparable issues with morale and wage compression amongst employees within the same business. Employees nearer the bottom of the scale will want to be paid nearer the higher end when learning of their respective pay range, without considering the many varying factors that contributed to their particular pay range. This consequences of this reporting requirement will be very burdensome and costly to employers and note that as prospective employees often negotiate their salaries, we have concerns that this requirement will likely result in longer hiring processes for employers, damage to employee morale and retention, and excessive compliance costs to employers, all while accomplishing little in solving gender pay gap concerns.

While SHRM Hawaii enthusiastically supports effective measures aimed at closing gender pay gaps, due to the concerns listed above, we cannot support this bill at this time and ask that it be held for more careful consideration and drafting. Thank you for the opportunity to testify.

We look forward to contributing positively to the development of sound public policy and continuing to serve as a resource to the legislature on matters related to labor and employment laws.

Thank you for the opportunity to testify on HB 1701 HD1.



John Knorek, Esq.
Legislative Affairs Committee Co-Chair



Kim Ripley
Legislative Affairs Committee Co-Chair



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
LABOR, CULTURE & THE ARTS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224
TUESDAY, MARCH 10, 2020 AT 2:45 P.M.**

To The Honorable Brian T. Taniguchi, Chair;
The Honorable Les Ihara, Jr., Vice Chair; and
Members of the Committee on Labor, Culture & The Arts,

TESTIMONY IN OPPOSITION TO HB1701 RELATING TO EQUAL PAY

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our opposition to HB1701.

While we appreciate the current laws in place to ensure people are not discriminated against in relation to wage, we oppose this bill to expand this law. There are a number of valid and nondiscriminatory reasons why an employer may want to raise the pay of an employee, but many of these reasons may not easily fall in the proposed categories such as work attitude, availability, and performance history. This could also further limit an employer who cannot afford to provide raises to all employees in the same job title, but wants to reward those who go above and beyond for the company.

Employers should have the freedom to provide employees with raises without mandates and this particular mandate could create many frivolous lawsuits and creates boundaries for employers by limiting why raises can be given.

Therefore, we oppose this bill and ask that it be deferred. We appreciate the opportunity to testify on this matter.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



**SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
TUESDAY, MARCH 10, 2020, 2:45 PM
HAWAII STATE CAPITOL, ROOM 224**

March 10, 2020

RE: HOUSE BILL NO. 1701, RELATING TO EQUAL PAY.

Chair Taniguchi, Vice Chair , and members of the committee:

My name is Dwight Mitsunaga, 2020 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii offers the following comments on HB 1701, which would conform statutory prohibitions against wage discrimination with other prohibitions on employment discrimination, clarifies allowable justifications for compensation differentials and remedies for pay disparity, and requires employers to disclose wage ranges to employees and prospective employees.

While we understand and appreciate the intent of this measure, we have concerns regarding the implementation and unintended consequences. There are existing current laws which protect people from pay disparity. Requiring employers to now disclose pay ranges to employees would take away a level of privacy from employees, and may create negative work environments. The cost of doing business in Hawaii, as well as the cost of living and the cost of housing are all astronomically high, and continues to climb. New layers of government oversight such as the ones in this bill continue to raise the costs to businesses.

We appreciate the opportunity to provide our comments on this matter.