
A BILL FOR AN ACT

RELATING TO EQUAL PAY.

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

1 SECTION 1. The legislature is committed to ensuring that
2 people of all genders are paid equally for work that is
3 substantially equal with respect to the skill, effort, and
4 responsibility required to perform the work and the conditions
5 under which the work is performed. The actual or perceived
6 gender classifications of employees as men, women, gender-
7 nonconforming, or other culturally specific identities (such as
8 māhū) should not affect the rate at which a worker is
9 compensated for their labor. To date, however, data on pay
10 disparity focuses on the disparities between the binary gender
11 classifications of men and women. The legislature recognizes
12 that Act 108, Session Laws of Hawaii 2018, is a significant step
13 toward ensuring that the pay disparity between men and women
14 diminishes. However, more work needs to be done.

15 The United State Bureau of Labor and Statistics reports
16 that women in Hawaii earned 79.4 per cent of what men earned in
17 2020, compared to 82.3 per cent nationwide. This means that



1 Hawaii ranks thirty-seventh among all states and the District of
2 Columbia in gendered income equality. The State's ratio fell
3 below eighty per cent for the first time since 2011.

4 Furthermore, Native Hawaiian and other Pacific Islander women
5 only earn sixty-six per cent of white male earnings nationally.

6 The legislature finds that salary transparency laws give
7 workers, employers, policymakers, and the public an important
8 tool to combat gender wage gap and promote gender, racial, and
9 economic equity. Seven states already have salary transparency
10 as state law.

11 Hawaii has led the way in civil rights. This Act proposes
12 to establish Hawaii as a leader in the area of pay equity and
13 clarifies that Hawaii's law is more protective of pay equity
14 rights than the federal Equal Pay Act of 1963 or Title VII of
15 the Civil Rights Act of 1964. It is not the intent of the
16 legislature to affect or diminish the existing, broader
17 protections provided under part I of chapter 378, Hawaii Revised
18 Statutes.

19 The purpose of this Act is to:

- 20 (1) Amend the list of protected classes under Hawaii's
21 equal pay statute to make the protections afforded by



1 this section consistent with the state statute that
2 prohibits employment discrimination;

3 (2) Clarify the factors that can be used by employers to
4 justify differences in compensation based on
5 seniority, merit, or other non-discriminatory
6 purposes;

7 (3) Provide pay transparency by requiring employers to
8 make salary range information available to employees
9 and job candidates, which will help employers manage
10 their pay expenses and encourage pay equity;

11 (4) Create an exception to the prohibition on employer
12 retaliation for discussion of employee wages if the
13 knowledge of the employee's wage arises from human
14 resources, payroll, or legal professional
15 responsibilities in the workplace; and

16 (5) Update the term "equal work" as used in state non-
17 discrimination statutes to "substantially similar
18 work", which is the more accurate term used in many
19 other states.

20 SECTION 2. Section 378-2.3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§378-2.3 Equal pay~~[; sex discrimination]~~. (a) No
2 employer shall discriminate ~~[between]~~ among employees ~~[because~~
3 ~~of sex,~~] by paying ~~[wages]~~ compensation to employees ~~[in an~~
4 ~~establishment]~~ at a rate less than the rate at which the
5 employer pays ~~[wages]~~ compensation to employees of ~~[the~~
6 ~~opposite]~~ another race, sex [in the establishment], gender
7 identity or expression, sexual orientation, age, religion,
8 color, ancestry, disability, marital status, arrest and court
9 record, or domestic or sexual violence victim status for ~~[equal]~~
10 substantially similar work ~~[on jobs the performance of which~~
11 ~~requires equal]~~ when viewed as a composite of skill, effort, and
12 responsibility, [and that are] performed under similar working
13 conditions. ~~[Payment]~~

14 (b) Compensation differentials ~~[resulting from:]~~ do not
15 violate this section if the defendant demonstrates that the
16 differential solely results from any of the following factors:

17 (1) A non-discriminatory seniority system; provided that
18 time spent on leave due to a pregnancy-related
19 condition or parental, family, or medical leave, shall
20 not reduce seniority;

21 (2) A non-discriminatory merit system;



1 (3) A system that objectively measures earnings by
2 quantity or quality of production; or

3 ~~[(4) A bona fide occupational qualification; or~~

4 ~~(5) A differential based on any other permissible factor~~
5 ~~other than sex[,]~~

6 ~~do not violate this section.]~~

7 (4) A factor that has neither the purpose nor the effect
8 of discriminating on any basis prohibited by this
9 section.

10 (c) For the purposes of subsection (b) (4), a factor has
11 the purpose of discriminating on a basis prohibited by this
12 section if its general use or application in a particular case
13 is motivated, in whole or in part, by considerations of race,
14 sex, gender identity or expression, sexual orientation, age,
15 religion, color, ancestry, disability, marital status, arrest
16 and court record, or domestic or sexual violence victim status.

17 (d) An employer who pays a wage in violation of this
18 section shall not, in order to comply with the provisions of
19 this section, reduce the wage rate of any employee.



1 (e) The agreement of an employee to work for less than the
2 wage to which the employee is entitled under this section is not
3 a defense to an action under this section.

4 [~~(b)~~] (f) An employer shall not retaliate or discriminate
5 against an employee for, nor prohibit an employee from,
6 disclosing the employee's wages, discussing and inquiring about
7 the wages of other employees, or aiding or encouraging other
8 employees to exercise their rights under this section[-];
9 provided that this subsection shall not apply to discussion of
10 employee wages if knowledge of the wages stems from human
11 resources, payroll, or legal professional responsibilities in
12 the workplace.

13 (g) For purposes of this section, "substantially similar
14 work" means work that is mostly similar in skill, effort, and
15 responsibility, and is performed under similar working
16 conditions; provided that:

17 (1) "Skill" means the experience, ability, education, and
18 training required to perform the job;

19 (2) "Effort" means the amount of physical or mental
20 exertion needed to perform the job; and



1 (3) "Responsibility" means the degree of accountability or
2 duties required in performing the job."

3 SECTION 3. Section 378-2.4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§~~378-2.4~~§~~ **Employer inquiries into and consideration**
6 **of salary or wage history.** (a) No employer, employment agency,
7 or employee or agent thereof shall:

8 (1) Inquire about the salary history of an applicant for
9 employment; or

10 (2) Rely on the salary history of an applicant in
11 determining the salary, benefits, or other
12 compensation for the applicant during the hiring
13 process, including the negotiation of an employment
14 contract.

15 (b) Notwithstanding subsection (a), an employer,
16 employment agency, or employee or agent thereof, without
17 inquiring about salary history, may engage in discussions with
18 an applicant for employment about the applicant's expectations
19 with respect to salary, benefits, and other compensation;
20 provided that if an applicant voluntarily and without prompting
21 discloses salary history to an employer, employment agency, or



1 employee or agent thereof, the employer, employment agency, or
2 employee or agent thereof, may consider salary history in
3 determining salary, benefits, and other compensation for the
4 applicant, and may verify the applicant's salary history.

5 (c) This section shall not apply to:

6 (1) Applicants for internal transfer or promotion with
7 their current employer;

8 (2) Any attempt by an employer, employment agency, or
9 employee or agent thereof, to verify an applicant's
10 disclosure of non-salary related information or
11 conduct a background check; provided that if a
12 verification or background check discloses the
13 applicant's salary history, that disclosure shall not
14 be relied upon during the hiring process for purposes
15 of determining the salary, benefits, or other
16 compensation of the applicant, including the
17 negotiation of an employment contract; and

18 (3) Public employee positions for which salary, benefits,
19 or other compensation are determined pursuant to
20 collective bargaining.



1 (d) An employer, upon reasonable request, shall provide
2 the pay scale for a position to an applicant applying for
3 employment and disclose the factors the employer considers in
4 setting salary levels.

5 (e) Upon hire, and thereafter annually and upon request,
6 an employer shall provide an employee the wage range for the
7 employee's job title and for jobs within the employer's business
8 that are substantially similar with respect to the skill,
9 effort, and responsibility required to perform the jobs and the
10 conditions under which the jobs are performed.

11 (f) An employer shall disclose an hourly rate or salary
12 range in all job listings and shall select a salary within the
13 posted range or, if necessary, republish each job listing with
14 an adjusted range before selecting an hourly pay rate or salary
15 for a prospective employee.

16 (g) An unlawful employment practice in violation of this
17 section occurs when:

18 (1) An employer adopts a discriminatory compensation
19 decision or other practice;

20 (2) An individual becomes subject to the discriminatory
21 decision or practice; or



1 (3) An individual is affected by application of the
2 decision or practice, including each time wages,
3 benefits, or other compensation are paid.

4 [~~(d)~~] (h) For purposes of this section:

5 "Compensation" shall be broadly construed. "Compensation"
6 shall include but not be limited to use of or access to employee
7 expense accounts, use of a vehicle, travel budgets, cost
8 reimbursements, paid vacation or sick leave, sabbatical
9 benefits, endowed chairs, insurance, stock options, pension
10 contributions, and other employee benefits.

11 "Inquire" means to:

12 (1) Communicate any question or statement to an applicant
13 for employment, an applicant's current or prior
14 employer, or a current or former employee or agent of
15 the applicant's current or prior employer, in writing,
16 verbally, or otherwise, for the purpose of obtaining
17 an applicant's salary history; or

18 (2) Conduct a search of publicly available records or
19 reports for the purpose of obtaining an applicant's
20 salary history;



1 provided that this shall not include informing an applicant, in
2 writing or otherwise, about the proposed or anticipated salary
3 or salary range for the position.

4 "Salary history" includes an applicant for employment's
5 current or prior wage, benefits, or other compensation, but
6 shall not include any objective measure of the applicant's
7 productivity, such as revenue, sales, or other production
8 reports."

9 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2023.

15

INTRODUCED BY:

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JAN 20 2023



H.B. NO. 745

Report Title:

Equal Pay; Salary or Wage History; Employment

Description:

Conforms statutory prohibitions against wage discrimination with other prohibitions on employment discrimination. Clarifies allowable justifications for compensation differentials and remedies for pay disparity. Requires employers to disclose wage ranges to employees and prospective employees. Exempts wage disclosure and discussion from the prohibitions on employer retaliation or discrimination if knowledge of the wages stems from human resources, payroll, or legal professional responsibilities in the workplace.

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