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# 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 finds that pay disparity  
2 persists between men and women who do similar work. The  
3 Institute for Women's Policy Research reported that if the  
4 progress to achieve pay parity continues at the same rate as it  
5 has since 1960, women and men will not reach pay parity until  
6 2058.

7           The legislature further finds that existing Hawaii law  
8 generally prohibits an employer from paying an employee at wage  
9 rates less than the rates paid to employees of the opposite sex.  
10 However, in 2015, the gender wage gap in Hawaii stood at sixteen  
11 cents on the dollar. A woman working full-time and year-round  
12 earned an average of eighty-four cents to every dollar a man  
13 earned. The gap was far worse for women of color: for every  
14 dollar a white male made, African-American and Asian-American  
15 women made only seventy-three cents and Latina women made only  
16 sixty-seven cents. This wage gap extends across almost all  
17 occupations reporting in Hawaii.



1           The legislature believes that the ability of employers to  
2 consider a job applicant's previous salary history is a  
3 contributing factor to the gender pay disparity. Women often  
4 disclose their lower salary histories, and employers offer lower  
5 salaries in response. In 2017, New York City became the first  
6 municipality in the United States to address this problem by  
7 prohibiting employers from requesting a job applicant's salary  
8 history. Hawaii should follow suit to help promote equality in  
9 the workplace and close the pay gap between men and women.

10           The legislature further finds that there are extreme income  
11 disparities for native Hawaiians, particularly for native  
12 Hawaiian women, which suggests that the combination of gender  
13 and race discrimination in pay may significantly impact the  
14 native Hawaiian community. Recent research indicates that  
15 native Hawaiian men and women make less than the statewide  
16 average annual income. Native Hawaiian men earn on average  
17 \$7,621 less annually than the total male population statewide.  
18 Native Hawaiian women, meanwhile, make on average \$5,967 less in  
19 income annually than women statewide, \$11,393 less annually than  
20 native Hawaiian men, and an average of \$19,014 less than all men  
21 statewide. Native Hawaiian women make seventy cents for every



1 dollar a man makes, and seventy-nine cents for every dollar a  
2 native Hawaiian man makes. Such disparities should be  
3 acknowledged and addressed in the search for true income equity  
4 in Hawaii.

5 The legislature also believes that pay secrecy undermines  
6 efforts to close the pay gap. A 2010 Institute for Women's  
7 Policy Research/Rockefeller Survey of Economic Security reported  
8 that 23.1 per cent of private sector workers reported that  
9 discussion of wages and salaries was formally prohibited, and an  
10 additional 38.1 per cent reported that this type of discussion  
11 was discouraged by managers. Pay secrecy inhibits workers from  
12 pursuing claims of pay discrimination because women cannot  
13 challenge wage discrimination that they do not know exists. The  
14 federal government and many states have taken action to end wage  
15 secrecy by prohibiting retaliation against employees who discuss  
16 wages. Hawaii can also take this step by prohibiting wage  
17 secrecy and retaliation or discrimination against employees who  
18 disclose or discuss their wages.

19 The purpose of this Act is to:

- 20 (1) Disrupt the cycle of wage inequality for women and  
21 minorities by prohibiting prospective employers from



1            requesting or considering a job applicant's prior wage  
2            or salary history in the job application process so  
3            that employers will set compensation offers based on  
4            skills and qualifications; and

5            (2) Encourage equal pay between men and women by  
6            prohibiting enforced wage secrecy and prohibiting  
7            retaliation or discrimination against employees who  
8            disclose, discuss, or inquire about their own or  
9            coworkers' wages for the purpose of exercising rights  
10           under the law.

11           SECTION 2. Chapter 378, Hawaii Revised Statutes, is  
12           amended by adding a new section to part I to be appropriately  
13           designated and to read as follows:

14           "§378-    Employer inquiries into and consideration of  
15           salary or wage history. (a) No employer, employment agency, or  
16           employee or agent thereof shall:

17           (1) Inquire about the salary history of an applicant for  
18           employment; or

19           (2) Rely on the salary history of an applicant in  
20           determining the salary, benefits, or other  
21           compensation for the applicant during the hiring



1 process, including the negotiation of an employment  
2 contract.

3 (b) Notwithstanding subsection (a), an employer,  
4 employment agency, or employee or agent thereof, without  
5 inquiring about salary history, may engage in discussions with  
6 an applicant for employment about the applicant's expectations  
7 with respect to salary, benefits, and other compensation;  
8 provided that if an applicant voluntarily and without prompting  
9 discloses salary history to an employer, employment agency, or  
10 employee or agent thereof, the employer, employment agency, or  
11 employee or agent thereof, may consider salary history in  
12 determining salary, benefits, and other compensation for the  
13 applicant, and may verify the applicant's salary history.

14 (c) This section shall not apply to:

15 (1) Applicants for internal transfer or promotion with  
16 their current employer;

17 (2) Any attempt by an employer, employment agency, or  
18 employee or agent thereof, to verify an applicant's  
19 disclosure of non-salary related information or  
20 conduct a background check; provided that if a  
21 verification or background check discloses the



1           applicant's salary history, that disclosure shall not  
2           be relied upon during the hiring process for purposes  
3           of determining the salary, benefits, or other  
4           compensation of the applicant, including the  
5           negotiation of an employment contract; and

6           (3) Public employee positions for which salary, benefits,  
7           or other compensation are determined pursuant to  
8           collective bargaining.

9           (d) For purposes of this section:

10          "Inquire" means to:

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

17          (2) Conduct a search of publicly available records or  
18          reports for the purpose of obtaining an applicant's  
19          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 3. Section 378-2.3, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§378-2.3[+] **Equal pay; sex discrimination.** (a) No  
12 employer shall discriminate between employees because of sex, by  
13 paying wages to employees in an establishment at a rate less  
14 than the rate at which the employer pays wages to employees of  
15 the opposite sex in the establishment for equal work on jobs the  
16 performance of which requires equal skill, effort, and  
17 responsibility, and that are performed under similar working  
18 conditions. Payment differentials resulting from:

- 19 (1) A seniority system;
- 20 (2) A merit system;



- 1           (3) A system that measures earnings by quantity or quality
- 2                   of production;
- 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           (b) An employer shall not retaliate or discriminate  
8 against an employee for, nor prohibit an employee from,  
9 disclosing the employee's wages, discussing and inquiring about  
10 the wages of other employees, or aiding or encouraging other  
11 employees to exercise their rights under this section."

12           SECTION 4. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15           SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17           SECTION 6. This Act shall take effect on January 1, 2050.



**Report Title:**

Employment; Job Applicants; Salary History; Gender  
Discrimination; Wage Secrecy

**Description:**

Prohibits prospective employers from requesting or considering a job applicant's wage or salary history as part of an employment application process or compensation offer. Prohibits enforced wage secrecy and retaliation or discrimination against employees who disclose, discuss, or inquire about their own or coworkers' wages. (SB2351 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

