

JAN 19 2018

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 pace
4 of change continues at the same rate as it has since 1960, women
5 and men will not reach pay parity until 2058.

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

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



1 and banning retaliation or discrimination against employees who
2 disclose or discuss their wages.

3 The purpose of this Act is to:

4 (1) Disrupt the cycle of wage inequality for women and
5 minorities by prohibiting prospective employers from
6 requesting or considering a job applicant's prior wage
7 or salary history in the job application process so
8 that employers will set compensation offers based on
9 skills and qualifications; and

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

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

19 "§378- Employer inquiries into and consideration of
20 salary or wage history. (a) No employer, employment agency, or
21 employee or agent thereof shall:



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

3 (2) Rely on the salary history of an applicant in
4 determining the salary, benefits, or other
5 compensation for the applicant during the hiring
6 process, including the negotiation of an employment
7 contract.

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

19 (c) This section shall not apply to:

20 (1) Applicants for internal transfer or promotion with
21 their current employer;



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

11 (3) Public employee positions for which salary, benefits,
12 or other compensation are determined pursuant to
13 collective bargaining.

14 (d) For purposes of this section:

15 "Inquire" means to:

16 (1) Communicate any question or statement to an applicant
17 for employment, an applicant's current or prior
18 employer, or a current or former employee or agent of
19 the applicant's current or prior employer, in writing
20 or otherwise, for the purpose of obtaining an
21 applicant's salary history; or



1 (2) Conduct a search of publicly available records or
2 reports for the purpose of obtaining an applicant's
3 salary history;
4 provided that this shall not include informing an applicant, in
5 writing or otherwise, about the proposed or anticipated salary
6 or salary range for the position.

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

12 SECTION 3. Section 378-2.3, Hawaii Revised Statutes, is
13 amended to read as follows:

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



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

8 do not violate this section.

9 (b) An employer shall not retaliate or discriminate
 10 against an employee for, nor prohibit an employee from,
 11 disclosing the employee's wages, discussing and inquiring about
 12 the wages of other employees, or aiding or encouraging any other
 13 employee to exercise rights under this section."

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

17 SECTION 5. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

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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.

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

