
SENATE BILL 5344

State of Washington

65th Legislature

2017 Regular Session

By Senators Fain, Walsh, Baumgartner, and Rivers

1 AN ACT Relating to enhancing enforcement of the equal pay act;
2 amending RCW 49.12.175; adding a new section to chapter 49.12 RCW;
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** INTENT. The legislature intends to update
6 the existing Washington state equal pay act, which has not been
7 modified since 1943, but should reflect the equal status of all
8 workers in Washington state. The legislature finds that in order to
9 establish equality among workers, men and women in the same job must
10 be compensated as equals. Further, although not currently allowed
11 under federal law, some employers institute various policies to
12 discourage employees from discussing their wages. The legislature
13 intends to ensure that employees have the opportunity to exercise
14 their rights in this area.

15 **Sec. 2.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to
16 read as follows:

17 ((Any)) (1) An employer in this state(~~(, employing both males and~~
18 ~~females, who shall discriminate in any way in the payment of wages as~~
19 ~~between sexes or who shall pay any female a less wage, be it time or~~
20 ~~piece work, or salary, than is being paid to males similarly~~

1 ~~employed, or in any employment formerly performed by males, shall be~~
2 ~~guilty of a misdemeanor. If any female employee shall receive less~~
3 ~~compensation because of being discriminated against on account of her~~
4 ~~sex, and in violation of this section, she shall be entitled to~~
5 ~~recover in a civil action the full amount of compensation that she~~
6 ~~would have received had she not been discriminated against. In such~~
7 ~~action, however, the employer shall be credited with any compensation~~
8 ~~which has been paid to her upon account. A differential in wages~~
9 ~~between employees based in good faith on a factor or factors other~~
10 ~~than sex shall not constitute discrimination within the meaning of~~
11 ~~RCW 49.12.010 through 49.12.180)) may not pay any of its employees in~~
12 ~~the same establishment at wage rates less than the rates paid to~~
13 ~~employees of the opposite sex for equal work which requires equal~~
14 ~~skill, effort, and responsibility, and is performed under similar~~
15 ~~working conditions, except when payment is made pursuant to a~~
16 ~~differential based on:~~

17 (a) A seniority system;

18 (b) A merit system;

19 (c) A system that measures earnings by quantity or quality of
20 production; or

21 (d) A bona fide factor considered by the employer other than sex,
22 such as education, training, performance, experience, or collective
23 bargaining agreement. Such factor applies only if it is not based on
24 sex, unless the differential is otherwise permitted by law and is
25 reasonably related to the work in question.

26 (2) For the purposes of this section, employees are deemed to
27 work in the same establishment if the employees work for the same
28 employer at workplaces located in the same geographical region, no
29 larger than a county, taking into account population distribution,
30 economic activity, and the presence of municipalities.

31 (3) Any employee receiving less than the wage to which the
32 employee is entitled under this section may recover in a civil action
33 the balance of the wages, including interest thereon, statutory
34 damages equal to the actual damages incurred, and costs and
35 reasonable attorneys' fees, notwithstanding any agreement to work for
36 a lesser wage.

37 (4) A civil action to recover wages under this section may be
38 commenced no later than two years after the cause of action occurs.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.12
2 RCW to read as follows:

3 (1)(a) An employer may not prohibit an employee from inquiring
4 about, discussing, or disclosing the compensation of the employee or
5 another employee, or aiding or encouraging any other employee to
6 exercise his or her rights under this section. This subsection does
7 not apply in instances where:

8 (i) An employee discloses the compensation of another employee
9 without that employee's consent; or

10 (ii) An employee who has access to the wage information of other
11 employees as a part of the employee's essential job functions
12 discloses the wages of other employees to individuals who do not
13 otherwise have access to such information, unless the disclosure is a
14 part of the employee's essential job function and is in response to a
15 complaint or charge, or in furtherance of an investigation,
16 proceeding, hearing, or action under this chapter, including an
17 investigation conducted by the employer.

18 (b) An employer may, in a written policy provided to all
19 employees, establish reasonable workplace and workday limitations on
20 the time, place, and manner for inquiries about, discussion of, or
21 the disclosure of wages. Such limitations must be consistent with all
22 other state and federal laws and may include prohibiting an employee
23 from discussing or disclosing the wages of another employee without
24 the employee's prior permission.

25 (c) Nothing in this subsection requires an employee to disclose
26 his or her wages. The failure of an employee to adhere to such
27 reasonable limitations in a written policy is an affirmative defense
28 to any claims made against an employer under this subsection,
29 provided that any adverse employment action taken by the employer was
30 for failure to adhere to such reasonable limitations and not for mere
31 inquiry, discussion, or disclosure of wages in accordance with such
32 reasonable limitations in such written policy.

33 (2) Any employee who has been discharged, discriminated, or
34 retaliated against in the terms and conditions of his or her
35 employment because the employee engaged in any conduct described in
36 this section may recover in a civil action reinstatement and
37 reimbursement for lost wages and work benefits caused by the
38 violation of this section, including interest thereon, statutory
39 damages equal to the actual damages, and costs and reasonable
40 attorneys' fees. However, no employee who initiates or has previously

1 initiated, directly or through a representative, proceedings of any
2 variety with the national labor relations board related to the
3 conduct alleged to be a violation of this section may maintain, or
4 recover any relief whatsoever under, a civil action pursuant to this
5 section.

6 (3) A civil action brought under this section may be commenced no
7 later than one year after the cause of action occurs.

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