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SENATE BILL 5630

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State of Washington

64th Legislature

2015 Regular Session

By Senators Cleveland, Conway, Jayapal, Frockt, Keiser, Rolfes, Nelson, McCoy, Pedersen, Hasegawa, Darneille, Chase, Kohl-Welles, Habib, Billig, Fraser, Hatfield, McAuliffe, Hobbs, Ranker, and Lias

1 AN ACT Relating to enacting the equal pay opportunity act by  
2 amending and enhancing enforcement of the equal pay act and  
3 protecting worker communications about wages and employment  
4 opportunities; amending RCW 49.12.175; recodifying RCW 49.12.175; and  
5 adding a new chapter to Title 49 RCW.

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

7 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that despite  
8 existing equal pay laws, there continues to be an unfair gap and  
9 inequality in wages among workers in Washington, especially women.  
10 Women working full-time in Washington earn eighty cents for every  
11 dollar earned by a man working the same job. The gap in earnings is  
12 even more disparate for women of color.

13 According to census bureau data, forty percent of households in  
14 the United States rely on a woman as the leading or sole breadwinner.  
15 In addition, women hold a significant percentage of minimum wage  
16 jobs. Income disparities limit the ability of women to provide for  
17 their families, leading to higher rates of poverty among women and  
18 children.

19 The legislature finds that in order to establish equality among  
20 workers, men and women in the same job must be compensated as equals.  
21 The legislature finds that gaps in employee wages is a form of gender

1 discrimination. Policies that encourage retaliation or discipline  
2 towards workers who discuss or inquire about compensation prevents  
3 workers from moving forward.

4 The legislature intends to update the existing Washington state  
5 equal pay act, not modified since 1943, to address income  
6 disparities, employer discrimination, and retaliation practices, and  
7 to reflect the equal status of all workers in Washington state.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
9 section apply throughout this chapter unless the context clearly  
10 requires otherwise.

11 (1) "Compensation" means discretionary and nondiscretionary wages  
12 and benefits provided by an employer to an employee as a result of  
13 the employment relationship.

14 (2) "Department," "director," "employee," and "employer" have the  
15 same meaning as defined in RCW 49.12.005.

16 (3) "Interested party" means an organization whose members'  
17 compensation and conditions of employment are affected by this  
18 chapter.

19 **Sec. 3.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to  
20 read as follows:

21 EQUAL PAY OPPORTUNITY. (1) Any employer in this state(~~(~~  
22 ~~employing both males and females, who shall discriminate in any way~~  
23 ~~in the payment of wages as between sexes or who shall pay any female~~  
24 ~~a less wage, be it time or piece work, or salary, than is being paid~~  
25 ~~to males)) who discriminates in providing compensation based on~~  
26 gender between similarly employed(~~(, or in any employment formerly~~  
27 ~~performed by males, shall be)) individuals is guilty of a~~  
28 misdemeanor.

29 (2)(a) If any ((female)) employee ((shall)) receives less  
30 compensation ((because of being discriminated against on account of  
31 her sex, and in violation of this section, she shall be)) or less  
32 favorable employment opportunities based on gender, that employee is  
33 entitled to recover in a civil action the full amount of compensation  
34 that ((she)) the employee would have received had ((she)) the  
35 employee not been discriminated against. An interested party may also  
36 bring an action on behalf of one or more employees. An employee is  
37 entitled to recover any actual damages; statutory damages of twice  
38 the actual damages or five thousand dollars, whichever is greater;

1 interest of one percent per month on all compensation owed; and costs  
2 and reasonable attorneys' fees. In addition, the court may order  
3 injunctive relief. In such action, however, the employer shall be  
4 credited with any compensation which has been paid to (~~her~~) the  
5 employee upon account.

6 (b) A differential in (~~wages between employees~~) compensation or  
7 employment opportunities based in good faith on a bona fide job-  
8 related factor or factors (~~other than sex shall~~), including  
9 education, training, or experience, that is not based on gender,  
10 unless the differential is otherwise permitted by law, does not  
11 constitute discrimination within the meaning of (~~RCW 49.12.010~~  
12 through 49.12.180)) this section.

13 (3) For purposes of this section, "less favorable employment  
14 opportunities" means assigning or directing the employee into a less  
15 favorable career track or position based on gender. Factors to be  
16 considered include, but are not limited to: Failing to provide the  
17 employee information about advancement in their career tracks or  
18 positions, or assigning work less likely to lead to promotion or  
19 future opportunities.

20 NEW SECTION. Sec. 4. WORKPLACE PRACTICES. (1) An employer may  
21 not:

22 (a) Require nondisclosure by an employee of his or her wages as a  
23 condition of employment; or

24 (b) Require an employee to sign a waiver or other document that  
25 prevents the employee from disclosing the amount of the employee's  
26 wages.

27 (2) An employer may not discharge or in any other manner  
28 retaliate against an employee for:

29 (a) Inquiring about, disclosing, comparing, or otherwise  
30 discussing the employee's wages or the wages of any other employee;

31 (b) Asking the employer to provide a reason for the employee's  
32 wages or reasons for a lack of employment advancement available to  
33 the employee; or

34 (c) Aiding or encouraging an employee to exercise their rights  
35 under this section.

36 NEW SECTION. Sec. 5. NO RETALIATION. An employer may not  
37 discharge or otherwise discriminate against an employee because the  
38 employee has filed any complaint, or instituted or caused to be

1 instituted any proceeding under this chapter, or testified or is  
2 about to testify in any such proceeding, or because of the exercise  
3 by such employee on behalf of himself or herself or others of any  
4 right afforded by this chapter.

5 NEW SECTION. **Sec. 6.** ADMINISTRATIVE ENFORCEMENT. (1) Upon  
6 complaint by an employee, the director may investigate to determine  
7 if there has been compliance with RCW 49.12.175 (as recodified by  
8 this act), sections 4 and 5 of this act, and the rules adopted under  
9 this chapter. The director may also initiate an investigation on  
10 behalf of one or more employees for a violation of RCW 49.12.175 (as  
11 recodified by this act), sections 4 and 5 of this act, and the rules  
12 adopted under this chapter. The director may require the testimony of  
13 witness and production of documents as part of an investigation.

14 (2) If the director has good cause to believe the employer has a  
15 pattern of complaints or violations of RCW 49.12.175 (as recodified  
16 by this act), the director may require the provision of data to the  
17 department, including data identifying the sex, race, compensation,  
18 and job classifications of employees. An employer who fails to  
19 provide the data required under this subsection within a reasonable  
20 time period may not use such data in any appeal to challenge the  
21 correctness of any determination by the department following an  
22 investigation of a pattern of complaints or violations.

23 (3) If the director determines that a violation occurred, the  
24 director may order the employer to pay to the complainant actual  
25 damages; statutory damages of twice the actual damages or five  
26 thousand dollars, whichever is greater; and interest of one percent  
27 per month on all compensation owed. The director may also order  
28 payment to the department of a civil penalty of not more than two  
29 hundred dollars for a first violation and not more than one thousand  
30 dollars for a repeat violation, and payment to the department of the  
31 costs of investigation and enforcement, and may order any other  
32 appropriate relief.

33 (4) An appeal from the director's determination may be taken in  
34 accordance with chapter 34.05 RCW. An employee who prevails is  
35 entitled to costs and reasonable attorneys' fees.

36 (5) The department shall deposit civil penalties paid under this  
37 section in the supplemental pension fund established under RCW  
38 51.44.033.

1        NEW SECTION.    **Sec. 7.**    CAUSE OF ACTION. An employee may bring a  
2 civil action against an employer for violation of section 4 or 5 of  
3 this act for actual damages; statutory damages of twice the actual  
4 damages or five thousand dollars, whichever is greater; interest of  
5 one percent per month on all compensation owed, and costs and  
6 reasonable attorneys' fees. The court may also order reinstatement  
7 and injunctive relief. In addition, an interested party may bring an  
8 action on behalf of one or more employees.

9        NEW SECTION.    **Sec. 8.**    NOTICE. The department may include notice  
10 of the provisions of this chapter in the next reprinting of  
11 employment posters.

12        NEW SECTION.    **Sec. 9.**    RULE MAKING. The department may adopt  
13 rules to implement sections 1 through 6 of this act.

14        NEW SECTION.    **Sec. 10.**    SHORT TITLE. This chapter shall be known  
15 and cited as the "equal pay opportunity act."

16        NEW SECTION.    **Sec. 11.**    CODIFICATION. (1) Sections 1, 2, and 4  
17 through 10 of this act constitute a new chapter in Title 49 RCW.

18        (2) RCW 49.12.175 is recodified as a section in chapter 49.---  
19 RCW (the new chapter created in this section).

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