
SENATE BILL 5894

State of Washington

68th Legislature

2024 Regular Session

By Senators Nobles and Keiser

Prefiled 12/21/23.

1 AN ACT Relating to including protected classes in the Washington
2 equal pay and opportunities act; and amending RCW 49.58.005,
3 49.58.010, 49.58.020, and 49.58.030.

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

5 **Sec. 1.** RCW 49.58.005 and 2019 c 345 s 1 are each amended to
6 read as follows:

7 (1) The legislature finds that despite existing equal pay laws,
8 there continues to be a gap in wages and advancement opportunities
9 among workers in Washington, especially women and workers in other
10 protected classes. Income disparities limit the ability of ((women))
11 these workers to provide for their families, leading to higher rates
12 of poverty among women and children and workers in other protected
13 classes. The legislature finds that in order to promote fairness
14 among workers, employees must be compensated equitably. Further,
15 policies that encourage retaliation or discipline towards workers who
16 discuss or inquire about compensation prevent workers from moving
17 forward.

18 (2) The legislature intends to update the existing Washington
19 state equal pay act, not modified since 1943, to address income
20 disparities, employer discrimination, and retaliation practices, and
21 to reflect the equal status of all workers in Washington state.

1 (3) The legislature finds that:

2 (a) The long-held business practice of inquiring about salary
3 history has contributed to persistent earning inequalities;

4 (b) Historically, women have been offered lower initial pay than
5 men for the same jobs even where their levels of education and
6 experience are the same or comparable; and

7 (c) Lower starting salaries translate into lower pay, less family
8 income, and more children and families in poverty.

9 (4) The legislature therefore intends to follow multiple other
10 states and take the additional step towards gender equality by
11 prohibiting an employer from seeking the wage or salary history of an
12 applicant for employment in certain circumstances. Further, the
13 legislature intends to require an employer to provide wage and salary
14 information to applicants and employees.

15 **Sec. 2.** RCW 49.58.010 and 2018 c 116 s 2 are each amended to
16 read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

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

22 (2) "Department" means the department of labor and industries.

23 (3) "Director" means the director of the department of labor and
24 industries, or the director's designated representative.

25 (4) "Employee" means an employee who is employed in the business
26 of the employee's employer whether by way of manual labor or
27 otherwise.

28 (5) "Employer" means any person, firm, corporation, partnership,
29 business trust, legal representative, or other business entity which
30 engages in any business, industry, profession, or activity in this
31 state and employs one or more employees, and includes the state, any
32 state institution, state agency, political subdivisions of the state,
33 and any municipal corporation or quasi-municipal corporation.

34 (6) "Protected class" means a person's age, sex, marital status,
35 sexual orientation, race, creed, color, national origin, citizenship
36 or immigration status, honorably discharged veteran or military
37 status, or the presence of any sensory, mental, or physical
38 disability or the use of a trained dog guide or service animal by a

1 person with a disability, as those terms are defined in RCW
2 49.60.040.

3 **Sec. 3.** RCW 49.58.020 and 2018 c 116 s 3 are each amended to
4 read as follows:

5 (1) Any employer in this state who discriminates in any way in
6 providing compensation based on a person's gender or membership in a
7 protected class between similarly employed employees of the employer
8 is guilty of a misdemeanor. If any employee receives less
9 compensation because of discrimination on account of the person's
10 gender or membership in a protected class in violation of this
11 section, that employee is entitled to the remedies in RCW 49.58.060
12 and 49.58.070. In such action, however, the employer shall be
13 credited with any compensation which has been paid to the employee
14 upon account.

15 (2) For purposes of this section, employees are similarly
16 employed if the individuals work for the same employer, the
17 performance of the job requires similar skill, effort, and
18 responsibility, and the jobs are performed under similar working
19 conditions. Job titles alone are not determinative of whether
20 employees are similarly employed.

21 (3) (a) Discrimination within the meaning of this section does not
22 include a differential in compensation based in good faith on a bona
23 fide job-related factor or factors that:

- 24 (i) Are consistent with business necessity;
- 25 (ii) Are not based on or derived from a gender-based differential
26 and are not based on or derived from the employee being a member of a
27 protected class; and
- 28 (iii) Account for the entire differential. More than one factor
29 may account for the differential.

- 30 (b) Such bona fide factors include, but are not limited to:
 - 31 (i) Education, training, or experience;
 - 32 (ii) A seniority system;
 - 33 (iii) A merit system;
 - 34 (iv) A system that measures earnings by quantity or quality of
35 production; or

- 36 (v) A bona fide regional difference in compensation levels.
- 37 (c) A differential in compensation based in good faith on a local
38 government ordinance providing for a minimum wage different from
39 state law does not constitute discrimination under this section.

1 (d) An individual's previous wage or salary history is not a
2 defense under this section.

3 (e) The employer carries the burden of proof on these defenses.

4 **Sec. 4.** RCW 49.58.030 and 2018 c 116 s 4 are each amended to
5 read as follows:

6 (1) The legislature finds that equality of opportunity for
7 advancement is key to reducing income disparities based on gender and
8 memberships in protected classes. The legislature further finds that
9 using gender or membership in a protected class as a factor in
10 advancement contributes to pay inequity.

11 (2) An employer may not, on the basis of a person's gender or
12 other membership in a protected class, limit or deprive an employee
13 of career advancement opportunities that would otherwise be
14 available.

15 (3) A differential in career advancement based on a bona fide
16 job-related factor or factors that meet the criteria in RCW
17 49.58.020(3)(a) (i) through (iii) does not constitute discrimination
18 within the meaning of this section. Such bona fide factors include,
19 but are not limited to, the factors specified in RCW 49.58.020(3)(b)
20 (i) through (iv).

21 (4)(a) If it is determined that an employer committed a pattern
22 of violations of this section as to an employee or committed a
23 violation of this section through application of a formal or informal
24 employer policy or practice, the employee is entitled to the remedies
25 in this section and in RCW 49.58.070.

26 (b) Upon complaint by an employee, the director must investigate
27 to determine if there has been compliance with this section and the
28 rules adopted to implement this section. The director, upon
29 complaint, may also initiate an investigation on behalf of one or
30 more employees for a violation of this section and the rules adopted
31 to implement this section. The director may require the testimony of
32 witnesses and production of documents as part of an investigation.

33 (c) If the director determines that a violation occurred, the
34 director shall attempt to resolve the violation by conference and
35 conciliation.

36 (d) If no agreement is reached to resolve the violation and the
37 director determines that the employer committed a pattern of
38 violations of this section as to an employee or committed a violation
39 of this section through application of a formal or informal employer

1 policy or practice, the director may issue a citation and notice of
2 assessment and order:

3 (i) The employer to pay to the employee actual damages, statutory
4 damages equal to the actual damages or (~~five thousand dollars~~)
5 \$5,000, whichever is greater, and interest of one percent per month
6 on all compensation owed;

7 (ii) The employer to pay to the department the costs of
8 investigation and enforcement; and

9 (iii) Any other appropriate relief.

10 (e) In addition to the citation and notice of assessment, if the
11 director determines that the employer committed a pattern of
12 violations of this section as to an employee or committed a violation
13 of this section through application of a formal or informal employer
14 policy or practice, the director may order payment to the department
15 of a civil penalty. The violation as to each affected employee
16 constitutes a separate violation.

17 (i) For a first violation, the civil penalty may not exceed
18 (~~five hundred dollars~~) \$500.

19 (ii) For a repeat violation, the civil penalty may not exceed
20 (~~one thousand dollars~~) \$1,000 or (~~ten~~) 10 percent of the damages,
21 whichever is greater.

22 (f) RCW 49.58.060 (3), (4), and (5) applies to this section.

--- END ---