

HB 2005 -5 STAFF MEASURE SUMMARY

House Committee On Business and Labor

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Meeting Dates: 2/22, 3/13, 3/20

WHAT THE MEASURE DOES:

Makes unlawful employment practice to discriminate against employee based on protected class when paying wages or other compensation. Provides that employer may pay different wage for equal work based on merit, seniority, productivity or bona fide factor such as education, training, or experience if criteria are met. Makes unlawful employment practice to screen applicant based on their salary history or to determine compensation based on applicant's or employee's salary history. Provides employee with choice to file complaint with Commissioner of Labor and Industries or file civil suit for alleged pay equity violations. Provides additional remedies for pay equity violations that include right to compensatory and punitive damages. Extends time limitation to bring claim by making actionable each subsequent payment of compensation that is based on underlying discriminatory practice. Extends tort claim notice from 180 days to one year for public employees alleging pay equity violation or . Protects seniority rights for employee on sick leave or family leave.

ISSUES DISCUSSED:

- Income gap by sex, race, and education level
- Ability to ask job candidate for their preferred salary
- Reasons employer may want to know salary history
- How basing salary on salary history can perpetuate discrimination
- Whether existing protections are effective at ending discrimination
- Cost to employer to defend against claim of discrimination

EFFECT OF AMENDMENT:

-5 (From Rep. Lininger) Replaces original measure. Differences between original measure and -5 amendments are as follows:

Defines compensation to include equity-based compensation. Redefines "work of comparable character." Replaces "wages" with "compensation" or "wages or other compensation." Applies pay equity provision to people with disabilities. Allows employer to consider compensation of their current employee during transfer, move or hire of employee to new position. Removes proposed amendment to Oregon Family Medical Leave Act and Oregon Sick Leave Act that would have required no loss of seniority when on leave.

BACKGROUND:

In 2011, Labor Commission directed the Oregon Council on Civil Rights to create a formal set of policy recommendations regarding equal pay in Oregon. (The Council is an advisory body appointed by the Commissioner.) Two years later, the Legislative Assembly passed Senate Bill 744 to direct the Council to study wage inequality and the factors that contribute to it. In January 2014, the Council issued its formal recommendations to address pay inequality in Oregon.

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Oregon has laws to protect the civil rights of job applicants and employees and to provide wage and hour protections to employees. Under existing wage and hour statutes, an employer is prohibited from paying an employee at a lower wage rate than that paid to employees of the opposite sex for work of comparable character when the work requires comparable skills unless there is a nondiscriminatory merit or seniority system in place or the difference is based in good faith on factors other than sex (ORS 652.220). An employee who was paid in violation of the statute has a private right of action for recovery of unpaid wages due for the prior one-year period and an equal amount in damages. Reasonable attorney fees may be awarded to the prevailing plaintiff.

In addition, it is an unlawful employment practice for an employer to discriminate based on race, color, religion, sex, sexual orientation, national origin, marital status, or age in wages or in terms, conditions, or privileges of employment (ORS 659A.030). An employee or applicant has a private right of action for recovery of back pay for the prior two-year period as well as compensatory and punitive damages. The prevailing party may be awarded reasonable attorney fees.