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April 26, 2017

Testimony in Support of HB 2005A – Fair Pay for All
Senate Workforce Committee

Submitted by Kate Newhall, Family Forward Oregon

Thank you for the opportunity to provide testimony in support of HB 2005A. Family Forward Oregon supports this bill to address pay inequity in Oregon.

Equal pay for equal work is still a far off reality for most women. Wage discrimination takes many forms, but can be seen across all industries, at all ages for working women. **Accounting for all other variables, Oregon women still make 80 cents for every dollar a man earns.**¹ This is even more marked for women of color: African American women are paid 63 cents and Latinas are paid just 54 cents for every dollar a white man earns.²

In 2017 women in Oregon and across the U.S. are still being paid lower wages than men, simply because they are women.

This has dire consequences for women and the families that rely on them. Mothers, in particular, are affected by the wage gap. They are now the primary or sole breadwinners in nearly 40 percent of families nationwide.³ And here in Oregon, more than 164,000 family households are headed by women.⁴ An incredible 30 percent of those families- that's 49,907 family households- are living on incomes below the federal poverty line.⁵ When women- and mothers- aren't earning equal pay for equal work, Oregon families suffer. Our economy relies on women's work and their wages make the difference between a family that's just scraping by or one that's getting ahead.

¹ National Women's Law Center, *The Wage Gap: The Who, How, Why, and What To Do* (2016). Retrieved February 20, 2017 from: <http://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>

² U.S. Census Bureau. (2012). *2011 Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-05. Work Experience in 2011 -- People 15 Years Old and Over by Total Money Earnings in 2012, Age, Race, Hispanic Origin, and Sex*. Available at: <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/2014-or-wage-gap.pdf>

³ Wang, W., Parker, K., & Taylor, P. (2013, May 29). *Breadwinner Moms*. Pew Research Center Publication. Retrieved 22 March 2014, from <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>

⁴ U.S. Census Bureau. (2015). *American Community Survey 1-Year Estimates 2014, Table DP02: Selected Social Characteristics in the United States*. Retrieved 17 September 2015, from http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_DP02&prodType=table

⁵ Ibid

HB 2005A is an important step to ending pay inequity in Oregon. It includes two important provisions that will help ensure all protected classes are paid equally for equal work in Oregon. First, it precludes employers from screening job applicants based on salary history or to base a salary decision on one's previous salary history. This will help break the cycle of pay disparity that can trap women in wages lower than their counterparts over multiple jobs, wage gaps that compound over the course of their career. By precluding employers from asking about salary history, we will ensure that employment offers will be made based on how an employer values the position, not an employee's past salary.

The second component of HB 2005A is arguably the most important provision of the bill and requires that employees are paid equally for "work of comparable character." Current law in Oregon is not adequate to protect workers from pay discrimination. While we do have basic anti-discrimination provisions in civil rights law (ORS Chapter 659A), these protections do not include the standard that workers be paid equally for "work of comparable character," simply that they not be discriminated against on the basis of their protected class status. Likewise, the current pay equity statute in wage and hour law (ORS 652.220), doesn't refer to all of the protected classes, just pay equity between the sexes. And neither civil rights law nor wage and hour law sets a standard for what "work of comparable character" means. HB 2005A spells out this important test by defining this critical term. Importantly, the current equal pay provisions in ORS 652.220 aren't enforceable under civil rights law in ORS Chapter 659A. HB 2005A corrects these two weaknesses in current law and fixes the legal shortcomings of our current protections. The bill also allows for legitimate pay differentials, like necessary language skills or certifications that are necessary to perform specific job functions.

I encourage this committee to pass HB 2005A as currently drafted and establish meaningful equal pay standards. We are concerned about potential amendments that would create loopholes in both our existing equal pay standards and the new protections envisioned in HB 2005A. We have serious concerns about both an affirmative defense for employers and inserting a weak or broad definition of "business necessity." These two proposals would undermine the important protections we are trying to create.

While the affirmative defense language may appear to provide employers an incentive to ensure they are paying their employees correctly, it risks doing more harm than good. Stronger legal protections, as envisioned in HB 2005A, will encourage companies to ensure they are paying employees fairly and to proactively investigate, identify and remedy disparities in their workforce. By contrast, amending the bill to provide an employer with an affirmative defense from liability for undertaking a "self-evaluation", and making "reasonable progress" toward eliminating pay disparities, without actually eliminating them. If the affirmative defense language is adopted, a victim of pay discrimination could be precluded from obtaining justice simply because their employer completed a "self-evaluation" and that "reasonable progress" – which is vague and undefined – has been made toward eliminating pay gaps. We are concerned that the proposed amendment does not provide any concrete parameters or standards to help evaluate the effectiveness of an employer's self-evaluation or actually ensure compliance with the law. Last, we

also object to creating broad or weak definitions of “business necessity.” Defining this term to include an “important and legitimate business purpose” is overly broad and could lead to abuse. What constitutes “important and legitimate” will subject to interpretation. There should be no business necessity case to justify discrimination. As the bill is currently written, business necessity reasoning for pay differentials can only exist if it is absolutely clear that the reason for a pay differential has nothing to do with discrimination. This language is very important. Additionally, the concept of business necessity, as written in the bill, has been well-tested in existing statute and case law, introducing a new and broad definition — as has been done in some amendments to this bill — will create massive loopholes that could lead to abuse.

Right now Oregon women and families are being shortchanged ten thousand dollars each year or more, amounting to hundreds of thousands of dollars over a lifetime because of the pay gap. With more families than ever relying solely on women’s paychecks for their livelihood, we must address wage inequality to ensure the financial strength and success of all women and families and Oregon’s economy as a whole. HB 2005A will help to ensure that women and other protected class members are paid equally for equivalent jobs and are not discriminated against in pay.