

## HB 2005 -A31 STAFF MEASURE SUMMARY

### Senate Committee On Workforce

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**Meeting Dates:** 4/26, 5/1, 5/10

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#### WHAT THE MEASURE DOES:

Makes unlawful employment practice to discriminate in payment of wages or other compensation on basis of protected class. Provides that employer may pay employees for equivalent work at different compensation levels based on merit, seniority, production 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. Allows use of salary history for internal hires and transfers. Expands remedies for pay equity violations and retaliation for wage inquires and wage claims to include right to compensatory and punitive damages and jury trial. Extends time limitation to bring claim by making actionable each payment based on underlying discriminatory practice. Extends tort claim notice from 180 days to one year for public employees alleging pay equity violation.

- Fiscal impact statement issued. No revenue impact.
- House vote: 36-24

#### ISSUES DISCUSSED:

- Proposed changes in the -A25 amendments
- Equal-pay analysis by employers
- *Bona fide* factors that allow employers to pay employees for work of comparable character at different compensation levels
- Time limits for employees to bring claims under the measure
- Clarification of remedies available under the measure
- Employers' ability to comply with the measure
- Frivolous lawsuits by employees

#### EFFECT OF AMENDMENT:

-A31 Replaces measure. Makes unlawful employment practice to discriminate in payment of wages or other compensation on basis of protected classes, including race, color, religion, sex, sexual orientation, national origin, marital status, disability, age, and veteran status. Provides that employer may pay employees for equivalent work at different compensation levels if entire difference in compensation levels is based on bona fide factor that is related to the position in question and is based on merit, seniority, quantity or quality of production, workplace locations, travel, education, training, or experience.

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. Allows use of salary history for internal hires and transfers. Prohibits employer from seeking salary history until offer of employment is made.

Expands remedies for pay equity violations and retaliation for wage inquires and wage claims under Oregon's unlawful employment discrimination laws to include right to compensatory and punitive damages and jury trial. Requires court to consider certain factors before awarding punitive damages. Provides prevailing party costs and reasonable attorney fees at trial and on appeal.

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Requires employer subject to Labor Commissioner's final order in favor of complainant to pay lesser of: back pay for the two-year period immediately preceding the filing of the complaint and the period between filing of the complaint plus issuance of the final order, or back pay for the period that the complainant was subject to an unlawful wage differential plus the period between filing of the complaint and issuance of the final order.

Limits liability of employer who has conducted equal-pay analysis within last three years, eliminated wage differential for plaintiff, and made reasonable and substantial progress toward eliminating wage differentials based on protected classes asserted by plaintiff.

Clarifies that plaintiffs have one year to bring claim. Extends time limitation to bring claim by making actionable each payment based on underlying discriminatory practice. Extends time for public employee to notify employer of claim from 180 days to 300 days following discovery of alleged loss or injury.

Requires employer to post notice of pay equity requirements. Requires BOLI to provide template of pay equity requirements to employers.

Prohibition on seeking salary history becomes effective 91 days after adjournment *sine die*. Screening and compensation discrimination provisions become effective January 1, 2019. Allows actions alleging violations of salary history inquiry provision on January 1, 2024.

### BACKGROUND:

In 2011, the Commissioner of the Bureau of Labor and Industries directed the Oregon Council on Civil Rights (an advisory body appointed by the Commissioner) to create a formal set of policy recommendations regarding equal pay in Oregon. Two years later, the Legislative Assembly passed Senate Bill 744, directing 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.

Oregon law protects the civil rights of job applicants and employees and provides 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.

House Bill 2005-A extends equal pay provisions in ORS 652.220 to people in the following protected classes: race, color, religion, sex, sexual orientation, national origin, marital status, disability and age. The measure prohibits an employer from using salary history to screen applicants or to determine compensation, or from acquiring the salary history of an applicant or employee from a current or former employer. The measure does not prohibit an applicant from disclosing salary history when negotiating compensation. The measure expands remedies for pay equity violations and retaliation for wage inquiry or wage claim to include compensatory and punitive damages and jury trial.