

HB 2005 A STAFF MEASURE SUMMARY
House Committee On Business and Labor

Carrier: Rep. Hack
Minority Report

Action Date: 03/20/17

Action: Do pass with different amendments. (Printed A-Eng.) Minority

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Report Signers: Rep. Greg Barreto, Rep. Jodi Hack

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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, quality or quantity of production, workplace location, travel, 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 to include compensatory damages. 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. Provides employer affirmative defense if employer evaluates pay practices and demonstrates reasonable progress in eliminating pay inequity based on protected class for equivalent work.

ISSUES DISCUSSED:

- Income gap by sex, race, and education level
- Ability to inquire about a job candidate's 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:

Replaces original measure.

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

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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-MRA 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, age and veteran status. 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 civil remedies for equal pay violations to include compensatory damages. An employer has an affirmative defense if they evaluate their pay practices and demonstrate reasonable progress in eliminating pay inequity based on protected class for equivalent work.