

HB 2005 B STAFF MEASURE SUMMARY**Carrier:** Sen. Taylor**Senate Committee On Workforce****Action Date:** 05/10/17**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 4-0-1-0**Yeas:** 4 - Hansell, Knopp, Monnes Anderson, Taylor**Exc:** 1 - Gelser**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Debra Maryanov, LPRO Analyst**WHAT THE MEASURE DOES:**

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 factors related to 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 that includes compensation is made and prospective employee provides written authorization.

Expands remedies for pay equity violations and retaliation for wage inquiries and wage claims under Oregon's unlawful employment discrimination laws to include right to compensatory and punitive damages and jury trial. Establishes criteria for court to award punitive damages. Provides prevailing party costs and reasonable attorney fees at trial and on appeal. 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.

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.

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 Bureau of Labor and Industries 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 starting January 1, 2024.

ISSUES DISCUSSED:

- Proposed changes in the -A25 through -A31 amendments
- Equal-pay analysis conducted by employers

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- *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
- Employer's ability to comply with the measure
- Frivolous lawsuits by employees

EFFECT OF AMENDMENT:

Replaces 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 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 and either party may request a jury trial. The prevailing party may be awarded costs and reasonable attorney fees.

House Bill 2005-B 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 administrative and judicial remedies for pay equity violations and retaliation for wage inquiry or wage claim to include compensatory and punitive damages and jury trial. Under House Bill 2005-B, employers may file a pre-trial motion to preclude compensatory and punitive damages if the employer can demonstrate that it has completed an equal-pay analysis in the three years preceding the claim, eliminated pay differentials for the plaintiff, and made reasonable substantial progress toward eliminating the wage differentials for the protected class asserted by the plaintiff. The provision allowing a civil action against an employer alleged to have sought the salary history of an applicant becomes operative January 1, 2024. All other provisions become operative January 1, 2019.