

SB 752 STAFF MEASURE SUMMARY

Senate Committee On Workforce

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Meeting Dates: 2/22

WHAT THE MEASURE DOES:

Expands protection against discrimination in payment of compensation based on sex to other protected classes. Prohibits employers from screening or determining compensation of applicants based on current or past compensation. Prohibits employers from seeking applicant salary history before making employment offer. Clarifies that unequal pay for substantially similar work is permissible when based on systems of seniority, merit, or production quantity, or on bona fide job-related factors based on business necessity. Clarifies that amounts owed to employee in violation of pay equity provisions constitute unpaid wages. Expands available remedies to include compensatory and punitive damages. Establishes that violation occurs each time unequal wages are paid. Allows all employees one year from discovery of violation to bring action. Protects worker's seniority following use of sick time or family leave.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

BACKGROUND:

Workers who are female, African American, and Latino earn less than white male workers. American women who work full time year-round are paid 79 cents for every dollar a man is paid. In 2015, the median hourly wage for a white American man was \$21. For a white woman, African American man, and Latino male, it was \$17, \$15, and \$14, respectively. For African American and Latino women, it was \$13 and \$12 an hour, respectively. If an employer sets compensation based on a job applicant's prior earning, pay gaps can continue.

In 2011, Labor Commissioner Brad Avakian 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.

Oregon has laws to protect the civil rights of job applicants and employees and to provide wage and hour protections to employees. Existing statutes prohibit an employer 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. The court may award reasonable attorney fees to the prevailing plaintiff.

In addition, it is an unlawful employment practice under current law 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 such discrimination to recover back pay for the prior two-year period, as well as compensatory and punitive damages. The court may award reasonable attorney fees to the prevailing plaintiff.

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SB 752 amends sections of ORS Chapters 652, 653, and 659A to expand protections for pay equity. SB 752 extends the application of pay equity provisions to other protected classes, including race, color, religion, sex, sexual orientation, national origin, marital status and age. It expands unlawful employment practices to include screening or determining the compensation of applicants based on their current or past compensation and seeking an applicant's salary history before making an offer of employment to the applicant. It clarifies exceptions to the pay equity provisions, which allow an employer to pay employees in equivalent jobs at different wage rates in certain situations. SB 752 makes changes to an employee's private right of action regarding the time limit to bring a claim and extends remedies available to employees for violations of pay equity provisions. It also adds protection for an employee's seniority when taking sick leave or family leave for purposes of claims under the pay equity provisions.