

HB 1646 Equal Pay Act would promote unfair pay for unequal work

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Key Findings

1. *HB 1646 seeks to fix a problem that does not exist. Wage discrimination based on sex has been illegal since 1963.*
2. *Claims that women earn 80 percent less than men are misleading. They do not take into consideration various factors that influence wage levels.*
3. *Once factors of experience and type of employment are considered the “wage gap” largely disappears.*
4. *Single, childless women ages 35-43 earn 8 percent more than men their age.*
5. *Wage discrimination is already illegal under federal and state law.*
6. *The subjective standards of HB 1646 leave employers exposed to unreasonable complaints and lawsuits.*

Introduction

HB 1646 would enact the Equal Pay Opportunity Act, and seeks to ban a practice that has been illegal under federal law since 1963.

The bill would impose new, vague standards for the wages and job opportunities an employer must provide all workers, putting the burden of defending those wages and opportunities on the employer, expand the protected class to every worker and leave employers open to litigation. The bill would also prohibit employers from requiring workers to not disclose or discuss their wages and compensation with other co-workers.

Based on WPC’s research and analysis, HB 1646 is yet another costly regulation that is unnecessary and burdensome to employers and harmful to workers.

Background

Supporters of HB 1646 claim women who work full-time earn 80 percent less than men working the same job, and that government intervention is needed to protect women from gender discrimination.

But this claim does not take into consideration a number of factors that influence male and female wages.

Studies show that when variation in work experience is considered —such as time on the job and hours worked part-time versus full-time—the pay gap between women and men shrinks considerably.¹

1 “The Disappearing Gender Wage Gap,” June E. O’Neill, National Center for Policy Analysis, June 22, 2012 at www.ncpa.org/pub/ba766, and “Highlights of women’s earnings in 2013,” U.S. Bureau of Labor Statistics, December 2014, at www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf.

According to the Bureau of Labor Statistics (BLS), 26 percent of women work part-time. In contrast, 13 percent of men work part-time. And among full-time workers, men are more likely than women to have a longer work-week. Only 5 percent of men worked 35-39 hours per week, while 12 percent of women did. Conversely, 25 percent of men worked 41 or more hours per week, compared to just 14 percent of women. The BLS says women who do work 40 hours per week earn 90 percent as much as men.²

Another factor research shows for the pay disparity is that women take more career interruptions to care for their family than men do:

- 39 percent of mothers say they have taken a significant amount of time off from work.
- 42 percent of mothers have reduced their work hours to care for a child or other family member.
- 27 percent of mothers say they have quit work altogether to take care of these familial responsibilities.³

In contrast, just 24 percent of fathers say they have taken a significant amount of time off to care for a child or other family member, 28 percent reduced work hours and just 10 percent of men have quit a job for family reasons.⁴

The data gathered by BLS supports these survey results. Men spend a larger percentage of weeks employed than women, with women age 18-46 spending 25 percent of weeks out of the labor force compared to men's 10 percent of weeks. Compared to men, women spend an average of two to three times as many weeks out of the labor force pursuing other goals in life as their male counterparts after age 24.⁵

As one study noted:

“...by the time they [young women] reached their mid-30s, their earnings relative to those of men began to fall further behind...Motherhood is one factor, as it can lead to interruptions in career paths for women and increased time spent on unpaid work at home.”⁶

Studies show these types of interruptions can have an impact on long-term earnings, although they contribute to long-term satisfaction by allowing women to devote their time and talents to other life activities. Once women's voluntary time out of the work force is accounted for, the average earnings of women and men become comparable.⁷

Another factor in pay disparity are the types of jobs and employers that women choose. Women are more likely to work for government agencies and nonprofits, and they are significantly less likely than

2 “Highlights of women's earnings in 2013,” U.S. Bureau of Labor Statistics, December 2014, at www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf.

3 “On Equal Pay Day, key facts about the gender pay gap,” Pew Research Center, April 8, 2014 at www.pewresearch.org/fact-tank/2014/04/08/on-equal-pay-day-everything-you-need-to-know-about-the-gender-pay-gap/.

4 “On Pay Gap, Millennial Women Near Parity—For Now,” Pew Research Center, December 11, 2013, at www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/#fn-17876-3.

5 “Number of Jobs Held, Labor Market Activity, and Earnings Growth Among the Youngest Baby Boomers: Results From a Longitudinal Study,” U.S. Bureau of Labor Statistics, July 25, 2012, at <http://www.bls.gov/news.release/pdf/nlsoy.pdf>.

6 “On Pay Gap, Millennial Women Near Parity—For Now,” Pew Research Center, December 11, 2013, at www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/#fn-17876-3.

7 “The Declining Importance of Race and Gender in the Labor Market: The Role of Federal Employment Policies,” by June E. O'Neill and Dave M. O'Neill, August 2012.

men to apply for jobs where work/life satisfaction ranks low.⁸

Women are more likely to seek employment in industries and for positions that are more flexible and amenable to their life needs. For example, 69 percent of women work in education and healthcare jobs, compared to just 30 percent of men. Such jobs often come with flexible work schedules and more time off. Conversely, 44 percent of men work in fields such as computers and engineering, compared to just 9 percent of women.⁹

The trade-off for the flexibility many women seek is often lower wages.

Accounting for all of these differences in work experience and type of employment, the wage gap shrinks to around 97 cents, near parity for women and men in the workplace.¹⁰

So, of the supposed 20 percent wage gap between women and men, 17 percent is explained by the different life and career choices of women. Women, on average, may appear to earn less than men, not because of discrimination, but because they value other rewards in addition to making money.

A comprehensive study by the former director of the Congressional Budget Office concludes:

“The factors underlying the gender gap in pay primarily reflect choices made by men and women, given their different [chosen] roles in the family, rather than labor market discrimination against women due to their sex.”¹¹

The fact is that women start their careers on equal footing with men; one study analyzing census data declared:

“...today’s young women are the first in modern history to start their work lives at near parity with men.”¹²

In fact, if there is a gender impact in wage discrimination, it is against young men. The average hourly wages of single, childless women aged 35-43 are 8 percent greater than that of their male counterparts.¹³ Statistics show a greater gender differential in many big cities. Women in this age group in Atlanta and Memphis earn 20 percent more than their male peers, while women in New York City, Los Angeles and San Diego earn 17 percent, 12 percent and 15 percent more, respectively, than men.¹⁴

Policy Analysis

HB 1646 seeks to fix a form of discrimination that data shows does not exist and is already illegal. Not only is the 80-cent wage gap claim a myth, existing

⁸ “Why Do Women Still Earn Less Than Men? Analyzing the Search for High Paying Jobs,” *Knowledge@Wharton*, The Wharton School of the University of Pennsylvania, August 1, 2012, at <http://knowledge.wharton.upenn.edu/article/why-do-women-still-earn-less-than-men-analyzing-the-search-for-high-paying-jobs/>.

⁹ “Highlights of women’s earnings in 2013,” U.S. Bureau of Labor Statistics, December 2014, at www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf.

¹⁰ “The Disappearing Gender Wage Gap,” June E. O’Neill, National Center for Policy Analysis, June 22, 2012 at www.ncpa.org/pub/ba766.

¹¹ “Book Review: The Declining Importance of Race and Gender in the Labor Market: The Role of Employment Discrimination Policies by June E. O’Neill and Dave M. O’Neill,” *The Washington Times*, February 21, 2013, at www.washingtontimes.com/news/2013/feb/21/book-review-the-declining-importance-of-race-and-g/?page=all.

¹² “On Pay Gap, Millennial Women Near Parity—For Now,” Pew Research Center, December 11, 2013, at www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/#fn-17876-3.

¹³ “The Disappearing Gender Wage Gap,” June E. O’Neill, National Center for Policy Analysis, June 22, 2012 at www.ncpa.org/pub/ba766.

¹⁴ “Workplace Salaries: At Last, Women on Top,” *Time magazine*, by Belinda Luscombe, September 1, 2010, at <http://content.time.com/time/business/article/0,8599,2015274,00.html>.

laws, including the Equal Pay Act, the Civil Rights Act and the Washington Law Against Discrimination have already been enacted. Thanks in part to such laws, the near parity in pay today has been achieved over the 37-cent gap of 1980.¹⁵

Not only is HB 1646 unnecessary, it holds employers to alarmingly subjective standards that are not defined and thus open to wide interpretation.

Under the bill an employer would be guilty of a misdemeanor for providing “less favorable employment opportunities” based on gender. The bill attempts to define “less favorable employment opportunities” as those that direct an employee “into a less favorable career track or position.” With circular definitions like this, the bill makes employers easy targets for lawsuits.

Under HB 1646, an employer could be guilty of putting an employee “into a less favorable career track or position” by “failing to provide an employee with information about advancement in their career tracks or positions, or assigning work less likely to lead to promotion or future opportunities.” Who decides what kind of work might more likely lead to “future opportunities,” and what constitutes an “opportunity?” The bill specifies just some of the factors that would be considered. There may be more, but no one yet knows what they might be.

Another ambiguous standard is the requirement that an employer prove that the differential in compensation or employment opportunities for workers with similar job titles is based on a “bona fide job-related factor.” This is another subjective, non-defined term that opens

employers up to uncertainty. Who decides what factors are job-related or bona fide? It would likely be the courts.

And expanding the cause of action beyond women means anyone becomes a “protected class.” Employers will feel immense pressure to unfairly pay the same wages to workers with different experience, skills and productivity, just to avoid lawsuits.

Finally, most private firms prohibit disclosure of wages for good reason—to respect worker privacy and protect them from social pressures to compare wages; to prevent petty jealousies, resentments and false charges of preferential treatment; and to guard commercial secrets from competitor firms.

Conclusion

In seeking to remedy a problem that does not exist, HB 1646 would be an unnecessary and costly burden on employers. The vague standards to which employers would be held would make it difficult, if not impossible, for employers to know if they are in compliance. This uncertainty would leave employers exposed to frivolous complaints and lawsuits.

HB 1646 would also harm workers by creating workplaces that are less flexible and less fair. Employers would not be as willing to accommodate flexible work schedules (such as reduced hours and working from home) in exchange for lower wages. And employers would be reluctant to tie compensation to work performance, so some workers would unfairly earn equal wages for unequal work.

Based on Washington Policy Center’s research and analysis, HB 1646 is poor public policy because it would not help workers and would be costly and unnecessary for employers.

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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¹⁵ “How the Human Capital Model Explains Why the Gender Wage Gap Narrowed,” by Solomon W. Polachek, Department of Economics, State University of New York at Binghamton, March 2004, at <http://www.binghamton.edu/economics/research/old-working-papers/docs/WP0412.pdf>.