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EQUAL COMPENSATION FOR COMPARABLE WORK

House Bill 4256 (Substitute H-2)
House Bill 4257 with committee amendment
First Analysis (4-28-98)

Sponsor: Rep. Lynne Martinez
Committee: Labor and Occupational Safety

THE APPARENT PROBLEM:

Despite progress that women have made in the workforce in the more than three decades since the passage of the 1963 federal Equal Pay Act and Title VII of the 1964 Civil Rights Act, women and people of color continue to experience unfair wage differentials that are based solely on sex and race discrimination. According to the Institute for Women's Policy Research, throughout the 1960s and 1970s, the ratio of women's to men's earnings in the United States remained fairly constant, at about 60 percent. That is, women earned about 60 cents for every dollar earned by their male counterparts. During the 1980s, however, women made progress in narrowing the gap between men's earnings and their own, so that by 1990, the ratio of the median earnings of women to those of men -- for full-time, year-round workers aged 18 to 65 -- was 68.5 percent. And according to research done by the Institute for Women's Policy Research, two thirds of the narrowing of the national male-female earnings gap between 1979 and 1994 was due to an actual decrease in men's real wages, and only one-third was due to women's rising real wages (in constant dollars, adjusting for inflation).

Nationally, women on average still earn only 71 cents for every dollar men earn, while in Michigan the gap reportedly is 62 cents, placing Michigan 45th among the states in terms of the wage gap. The National Committee on Pay Equity reportedly estimates that the wage gap costs a woman approximately $420,000 over her lifetime, and it is well documented that certain full-time women workers with college degrees still make only slightly more than their same-race male counterparts with high school diplomas. When wages are rank-ordered by race and sex, however, men's earnings, regardless of race, rank above women's wages.

One of the major factors influencing lower wages for women is sex-segregation in the labor force, with a concomitant phenomenon in which the more women there are in an occupation, the lower the pay for that occupation tends to be or become. That is, not only are traditional "women's jobs" (such as child care, social work, and teaching) generally lower paid than comparable traditional "men's work," there is evidence that wages become depressed when large numbers of women enter previously male-dominated fields, so that even the wages of men working in these areas are lowered once a significant number of women enter these fields.

Legislation has been introduced to address the issue of that part of the earnings gap that can be attributed to sex or race discrimination.

THE CONTENT OF THE BILLS:

The bills generally would make unequal compensation for comparable work a violation of a person's civil rights. House Bill 4256 would amend the Person's With Disabilities Civil Rights Act (formerly the Michigan Handicapper Civil Rights Act, until amended by Public Act 20 of 1998), and House Bill 4257 would amend the Elliott-Larsen Civil Rights Act, to prohibit discriminating against employees by providing unequal compensation for comparable work. Both bills would define compensation as including all of an employee's earnings, including wages and benefits, regardless of the manner by which the amounts are calculated. The bills are tie-barred to each other. A more specific description of the contents of the bills follows.

House Bill 4256. The Persons With Disabilities Civil Rights Act (MCL 37.1201 et al.) prohibits employers from, among other things, refusing to hire, promote or otherwise discriminate against an individual because of a handicap that is unrelated to the individual's ability

to perform his or her work duties. The bill would amend the act to additionally prohibit an employer from unequally compensating an employee for work of comparable value in terms of the skill, responsibility, effort, education or training, and working conditions because of a handicap that is unrelated to the employee's ability to perform the duties of the particular job or position.

House Bill 4257. The Elliott-Larsen Civil Rights Act (MCL 37.2102 et al.) establishes as a civil right the opportunity to obtain employment, housing, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination based on the individual's religion, race, color, national origin, age, sex, height, weight, or marital status and prohibits employers from discriminating against employees or potential employees for the same reasons.

The bill would amend the act to prohibit an employer from unequally compensating an employee for work of comparable value in terms of the skill, responsibility, effort, education or training, and working conditions because of the employee's religion, race, color, national origin, age, sex, height, weight, or marital status. In addition, the bill would allow actions based on discrimination to be brought or continued under the act before the effective date of the bill's provisions, if the action was based on conduct similar to the type of conduct that would be prohibited by the bill.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The issue that the bills address is one of simple fairness: if people perform comparable work -- work that requires comparable skills and education -- then they should be compensated equally regardless of whether they are women or men and regardless of their actual job titles. And while many people are aware that traditional "women's jobs" pay less than traditional "men's jobs," what many people may not know is that in every category of employment, not just in those areas dominated by women, women's earnings are less than men's. But when lower pay for women cannot be explained by differences in the qualifications of women and men workers, the only conclusion to be drawn is that discrimination still plays an important factor in the labor market, and it is only right that such discrimination be prohibited.

While state and federal laws currently require equal pay for equal work, the "equal work" is defined as "the same job for the same employer." But these laws do not cover the situations in which women work in jobs that are different from those that men do (or in similar jobs with different job titles), but that requires comparable education, skills, effort, and working conditions. In these cases, the work women do is as valuable as that done by men, but it is not compensated equally, which is patently unfair.

The wage setting process should be based on objective factors such as the skill, education, responsibility, effort, training, and working conditions a job requires, and not on the sex or race of the worker. And that part of the earnings gap between women and men that can be attributed to sex or race discrimination must be eliminated.

Equal compensation for comparable work is not just a women's issue; in this time of increasing job insecurity, the "globalization" of the work force, and the stagnation or decline of real wages, this is a family issue of vital concern to all working families. Other states, including Michigan's neighbor state of Minnesota, reportedly have enacted legislation requiring equal pay for comparable work, and it is long past time that Michigan -- which has one of the worst male-female wage gaps in the United States -- do so also.

Against:

Representatives of business interests argue that the bills are duplicative and unnecessary, since the issue of equal pay for equal work already is covered under existing state and federal laws and since the gap between men's and women's wages already is slowly closing. The Equal Pay Act of 1963 already requires that equal wages be paid for "equal or substantially equal" jobs, while Title VII of the Civil Rights Act of 1964 prohibits wage discrimination on the basis of race, color, sex, religion, national origin or disability. In addition, the Michigan Elliot-Larsen Civil Rights Act and the Persons With Disabilities Civil Rights Act also already prohibit job discrimination based on sex or factors unrelated to an individual's ability to perform the job. Thus, to the extent that wage discrimination does occur in the workplace, adequate state and federal remedies already exist to address cases of alleged discrimination based solely on sex or disability. While litigation under these laws may be

costly and time-consuming, as well as carrying the possibility of employer retaliation, the proposed bills would not change these aspects of litigation for the individual.

Business interests also argue that much of the gap can be attributed to women's relatively recent entry into the workforce; as women's job seniority increases, so, too, will their wages. Business opponents further argue that the legislation would constitute an unwarranted intrusion of government into the private marketplace, interjecting government into the setting of wages in private businesses and exacerbating the regulatory burden on businesses by introducing yet another element of government micromanagment into the private sector. While Minnesota reportedly does require equal pay for comparable work, it does so only for the public sector, not the private sector, so the bills would not be comparable to Minnesota's legislation. In fact, if the bills were to be enacted, Michigan reportedly would be the only state in the union that would require equal pay for comparable work in both the public and private sectors.

Furthermore, businesses already are doing a great deal to mentor and promote women in the workplace through education, counseling, mentoring, and training, and it is these kinds of private sector programs that the legislature should be supporting, instead of a "comparable worth" approach in which some government entity or the courts would impose arbitrary and artificially high wage rates that would totally ignore market influences and the worth of particular jobs to employers.

Since, moreover, the bills do not define what would constitute "comparable work," this would be fought out in time-consuming and costly litigation in the court system. The government and the private sector both should focus on individual merit and not on some arbitrary, rigid classification of jobs in determining wages. Insisting on "comparable worth" is the wrong way to lessen the wage gap and goes contrary to the whole concept of wages based on individual merit. Abandoning the incentives and discipline of the free market in favor of bureaucratic and judicial decision-making would impose tremendous costs on employers and Michigan's economy, and definitely would make Michigan a less desirable place for businesses to locate or do business in.

Response:

While it may be true that the wage gap between women and men has been slowly narrowing in the past three decades, the bills still are needed. Why should women wait three more decades to further close the wage gap when that gap is based purely on unfair discrimination? Furthermore, it is not true that women have entered the workforce relatively recently. Women have always worked in the paid labor force, and while it is true that recent years have seen a rise in the numbers of middle class women in the paid workforce, the fact remains that traditional "women's work" has not received comparable pay even when it involved comparable education, skills, and seniority -- a point that the bills would directly address. Requiring equal pay for comparable work does not go against the concept of wages based on individual merit; rather, it reinforces this concept by requiring that wages be based on objective criteria such as education, skills, seniority, effort, and work conditions, rather than on the irrelevant category of sex. Nor do the bills propose that government entities set "artificial" or "arbitrary" wage rates; rather, this is something that is left open. Employers would merely be given an incentive, greater than exists under current state and federal law, to progress more quickly to eliminating wage discrimination based on such irrelevant factors as the sex of their employees. Finally, if the current laws were indeed effective, then presumably the wage gap between women and men that is based solely on sex would have disappeared completely already. The fact that it has not suggests that the state needs to provide further incentives for businesses to hasten the day when they will treat all of their employees fairly and objectively, based on the employees' education, skills, experience, and worth, and not on the irrelevant issue of sex. It should also be pointed out that given the decimation of the state Department of Civil Rights in recent years, it appears less and less likely that avenues other than privately instigated litigation will be available to those who believe that they have been unfairly discriminated against in the wages they receive based solely on their sex.

Against:

If society values certain "women's jobs" less than "men's work," then it is not that employers are discriminating against women but that social values dictate the market value of certain jobs. In fact, as one business representative testified, it is most often women who decide how much they are willing to pay for child care, and if child care workers are underpaid then perhaps women's attitudes should be looked at. In any case, employers should not be penalized for social values over which they have little or no control, which is what the bills would do.

Response:
Just as one of society's "values" once was slavery does not mean that public policy should not take the lead in remedying obvious social wrongs and inequities. Equal pay for comparable work is the fair and just thing to do, and the state should not wait for "social values" -- which really refer to an economic system that will exploit workers whenever it can get away with doing so -- to change before legally requiring that workers be treated fairly. And finally, to put the onus for the low salaries paid to child care workers on the supposed low value that working mothers place on child care is at best disingenuous and at worst insulting. One of the problems that women in the workforce face is that while they often are paid less than their male counterparts simply because they are women, at the same time they usually are the ones responsible for obtaining child care in order to be able to work in the paid workforce for these generally lesser wages than their comparable male counterparts. To suggest that women who utilize paid child care in order to work in paid employment do not pay more for child care because they do not value child care -- instead of being unable to pay more for child care because they themselves do not make enough money in the "free marketplace" -- is once again to blame the victim.

POSITIONS:

NOW - Michigan Conference supports the bills. (4-28-98)

The American Association of University Women supports the bills. (4-28-98)

A representative of the Michigan Pay Equity Network (which is composed of more than 75 women's labor, educational and civil rights groups) testified in support of the bills. (4-21-98)

A representative of the Metro-Detroit Chapter of the Coalition of Labor Union Women testified in support of the bills. (4-21-98)

A representative of the Michigan AFL-CIO testified in support of the bills. (4-21-98)

The Michigan Jobs Commission does not support the bills. (4-28-98)

The National Federation of Small Businesses opposes the bills. (4-28-98)

The Michigan Chamber of Commerce opposes the bills. (4-28-98)

A representative of the Small Business Association of Michigan testified in opposition to the bills. (4-21-98)

A representative of the Michigan Manufacturers Association testified in opposition to the bills. (4-21-98)

Analyst: S. Ekstrom

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.