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## **OLR Bill Analysis**

### **sHB 5386**

#### ***AN ACT CONCERNING VARIOUS PAY EQUITY AND FAIRNESS MATTERS.***

#### **SUMMARY**

This bill generally prohibits employers, including the state and its political subdivisions, from asking about a prospective employee's wage and salary history before the prospective employee accepts an employment offer that includes wages. It allows exceptions (1) when a prospective employee voluntarily discloses his or her compensation history, (2) if the disclosure is specifically authorized by state or federal law, and (3) for certain types of compensation elements (e.g., stock value).

In a lawsuit alleging a violation of the bill or of existing law's prohibition on employers taking certain steps to limit their employees' ability to share information about their wages, the bill allows an employer to limit its damages if it can show that it (1) completed an equal pay analysis of its pay practices within three years before the suit was filed and (2) eliminated wage differentials for the plaintiff.

The bill also requires employers using a seniority system to defend themselves in certain gender wage discrimination lawsuits to include in an employee's seniority any time spent on protected family and medical leave or leave due to a pregnancy-related condition.

EFFECTIVE DATE: October 1, 2018

#### **WAGE AND SALARY HISTORY**

The bill prohibits employers from asking or directing a third-party to ask about a prospective employee's wage and salary history before the prospective employee accepts an employment offer that includes wages. The prohibition does not apply (1) if the prospective employee voluntarily discloses his or her wage and salary history or (2) to any

actions taken by an employer, employment agency, or its employees or agents under a federal or state law that specifically authorizes the disclosure or verification of salary history for employment purposes. The bill also allows an employer to ask about compensation structure, but the employer may not ask about the value of the compensation structure's elements, except for the value of stocks or equity.

### ***Enforcement and Limited Damages***

The bill allows prospective employees to bring a lawsuit within two years after an alleged violation of the bill's prohibition on asking about salary histories. Employers can be found liable for compensatory damages, attorney's fees and costs, punitive damages, and any legal and equitable relief the court deems just and proper.

In a lawsuit alleging a violation of the bill or of existing law's prohibition on employers taking certain steps to limit their employees' ability to share information about their wages, the bill allows an employer to file a motion in any court of competent jurisdiction to disallow an award of compensatory or punitive damages.

Under the bill, a court must grant the motion if the employer shows by a preponderance of evidence that it (1) eliminated wage differentials for the plaintiff and (2) completed an equal pay analysis of its pay practices within three years before the suit was filed. The equal pay analysis must have been performed in good faith and in reasonable detail and scope in light of the employer's size. It cannot be admitted as evidence in any other proceeding. If the employer is successful, the court may award back pay only for the two-year period immediately preceding the suit's filing, plus costs and attorney's fees, but it may not award compensatory or punitive damages.

### **GENDER WAGE DISCRIMINATION LAWSUITS**

The state's labor law allows employees (or the labor commissioner) alleging gender wage discrimination to sue employers for lost wages, compensatory damages, attorney's fees, and in some instances, punitive damages (CGS § 31-76). However, employers with pay differentials can defend themselves by showing that the differentials

are based on (1) seniority; (2) merit; (3) a system that measures production quantity or quality; or (4) bona fide factors such as job-related education, training, or experience (CGS § 31-75 (b)).

Under the bill, if an employer uses a seniority system to defend its pay differentials, an employee's time spent on leave due to a pregnancy-related condition or protected family and medical leave must not reduce seniority.

## **BACKGROUND**

### ***Related Bill***

sSB 15, reported favorably by the Labor and Public Employees Committee, also generally prohibits employers from asking about a prospective employee's wage and salary history before the prospective employee accepts an employment offer that includes wages.

## **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13    Nay 0    (03/20/2018)