



**Report to the 24th Legislature
As Required under the Provisions of
Act 35 - Relating to Equal Pay
Session Laws of Hawaii 2005**

Submitted by:
Pay Equity Task Force
Office of the Governor
STATE OF HAWAII

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REPORT TO THE LEGISLATURE REQUIRED BY LAW

Act 35, Session Laws of Hawaii 2005, became law on April 28, 2005. The Act reiterates and reinforces current state and federal law prohibiting sex discrimination in payment of wages to women and men performing "equal work" in jobs that require equal skill, effort and responsibility under similar working conditions in the same establishment. The language of Act 35 mirrors language from the federal Equal Pay Act (29 U.S.C. §206(d)), except for the term "because of sex", which is specifically defined in section 378-1, Hawaii Revised Statutes

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("HRS").

In addition to reinforcing the State of Hawaii's commitment to pay equity, Act 35 also established a Pay Equity Task Force to be conducted under the auspices of the Office of the Governor to review any relevant information and make recommendations for funds or specific actions to correct any gender-based pay inequities that have been identified by the task force.

The duration of the task force was set from July 1, 2006 until June 30, 2011, when the task force shall be terminated.

Composition of the Pay Equity Task Force

Act 35 requires that the Pay Equity Task Force consist of the following:

1. One representative from each of the unions serving as exclusive representative for civil service workers;
2. The Director of Labor and Industrial Relations ("DLIR") or the director's designee;
3. Four representatives of public employers appointed by the Governor;
4. The Chairperson of the Hawaii State Commission on the Status of Women or the Chairperson's designee; and
5. Three individuals appointed by the Governor who represent the public at large.

Duties of the Pay Equity Task Force

As described by Act 35, the purpose of the task force is to determine the current extent and trend of gender-based pay inequities in the State of Hawaii. The task force is required to review the 1995 "Study of Wage Equity in Public Employee Bargaining Units 1 and 10," the 1987 study entitled "A Job Evaluation Study of Selected Job Classes of the State and Counties of Hawaii," and any other data and information that the task force believes is relevant to its goals.

Further, the task force is required to review the specified materials and, as appropriate, develop recommendations for submission to the state legislature regarding the need for funding or specific actions to correct any gender-based pay inequities that the task force may discover. The task force is also required to provide the legislature with an annual report documenting any progress.

Relevant Pay Equity Laws

A. State Laws

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Haw. Rev. Stat., Chapters 368 and 378. The Hawaii Civil Rights Commission (“HCRC”), which is an administratively attached agency to the DLIR, enforces the State’s anti-discrimination laws provided in Chapters 368 and 378, HRS. These chapters and the HCRC administrative rules already prohibit employers from discriminating on the basis of sex, especially in the payment of wages. The HCRC is obligated to investigate and enforce Hawaii’s anti-discrimination laws. If the employer is found in violation of the law, the Commission may award the employee with back pay, and other equitable relief.

Haw. Rev. Stat. § 378-2(1)(A), explicitly prohibits employers to “discriminate against any individual in compensation or in the terms, conditions, or privileges of employment” on the basis of the employee’s “sex.”

Haw. Rev. Stat., § 378-2.3, prohibits employers from discriminating between employees because of sex by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex for work requiring equal skill, effort, and responsibility, and is performed under similar working conditions.

B. Federal Laws

Equal Pay Act of 1963. This federal law prohibits sex-based pay differentials in employment. Generally, it requires all employers subject to the Fair Labor Standards Act (“FLSA”) to provide equal pay for men and women performing similar work.

Title VII of the Civil Rights Act of 1964. This Act specifically prohibits employment discrimination on the basis of race, sex, national origin, or religion in all institutions with fifteen or more employees.

Executive Order (“E.O.”) 11246 of 1965. This Presidential E.O. prohibits job discrimination by employers holding federal contracts or subcontracts, on the basis of race, sex, color, national origin, or religion. The E.O. requires employers to take affirmative steps to ensure equal opportunity in all aspects of employment.

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The United States Equal Employment Opportunity Commission ("EEOC") enforces these laws. Currently, the HCRC and the EEOC share responsibilities in the enforcement of these laws.

Progress of the Pay Equity Task Force

Since enactment of Act 35, the Office of the Governor convened the initial organizational meeting of the Pay Equity Task Force on Friday, June 16, 2006, in the conference room of the Governor's Office. At that meeting, the Honorable Judge Marie Milks (retired) was elected to be the chairperson of the Pay Equity Task Force. Since the organizational meeting, the task force has met on five (5) occasions: 1) September 8, 2006; 2) December 8, 2006; 3) February 16, 2007; 4) April 10, 2007; and 5) April 30, 2007. At these meetings, the task force members reviewed the reports recommended by the legislature, as well as reports submitted by the DLIR (Attachment #1) and Ms. Venora Hung (Attachment #2). Also at the meeting on April 30, 2007, the Honorable Judge Marie Milks (retired) voluntarily stepped down from the chair position and the task force elected Margaret Masunaga to be the chairperson.

The discussion at the initial meetings centered on ascertaining the scope and intent of the legislation that formed the Pay Equity Task Force. The legislation that guides the purpose of the task force is ambiguous and broad. The purpose of the task force as described by Act 35 reads:

The purpose of the task force shall be to determine the current extent and trend of gender-based pay inequities in the State of Hawaii. The task force shall review the 1995 "Study of Wage Equity in Public Employee Bargaining Units 1 and 10"; the 1987 study entitled "A Job Evaluation Study of Selected Job Classes of the State and Counties of Hawaii"; and any other data and information pertinent to the accomplishment of its purpose. The task force shall review the materials and, as appropriate, develop recommendations for submission to the legislature regarding the need for funding or specific actions to correct any gender-based pay inequities that are discovered. In addition, the task force shall provide the legislature with an annual report documenting its progress.

Findings and Recommendations

The language of Act 35 does not specifically indicate whether the task force should be studying pay inequities within the private and/or public employment sectors. While the language says the "... purpose of the task force shall be to determine the current extent and trend of gender-based pay inequities in the State of Hawaii", it also directs the task force to review prior wage equity studies that centered on public sector employees. Further, the language suggests that the task force develop recommendations for funding and or specific actions based upon the review of those earlier studies.

The Pay Equity Task Force offers the following findings and recommendations:

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1. The legislature should clarify the scope of the duties of the Pay Equity Task Force. Specifically, the legislature should make clear whether the task force should focus solely on Hawaii's civil service system, on private sector employees and employers, or on both.
2. A review of the “Study of Wage Equity in Public Employee Bargaining Units 1 and 10” published 1995 and “A Job Evaluation Study of Selected Job Classes of the State and Counties of Hawaii” published in 1987, has revealed that that these studies are outdated. Additionally, the job classifications found in these studies have changed significantly since their respective publications. Consequently, an attempt to perform a job match proved to be fruitless.
3. Once the scope of the duties of the Pay Equity Task Force is clarified, should a comprehensive study be needed, the task force recommends that funding be appropriated.