

Legislative Analysis



PAY EQUITY

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House Bill 5618 as introduced
Sponsor: Rep. Samantha Steckloff

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5619 as introduced
Sponsor: Rep. Christine Morse

House Bill 5620 as introduced
Sponsor: Rep. Erin Byrnes

House Bill 5624 as introduced
Sponsor: Rep. Jennifer A. Conlin

House Bill 5621 as introduced
Sponsor: Rep. Kristian C. Grant

House Bill 5625 as introduced
Sponsor: Rep. Helena Scott

House Bill 5622 as introduced
Sponsor: Rep. Veronica A. Paiz

House Bill 5626 as introduced
Sponsor: Rep. Stephanie A. Young

House Bill 5623 as introduced
Sponsor: Rep. Betsy Coffia

House Bill 5627 as introduced
Sponsor: Rep. Julie Brixie

Committee: Labor
Revised 12-13-24

SUMMARY:

Together, House Bills 5618 to 5627 would establish several measures related to pay equity. The bills would add protections for employee pay transparency, require employers to publish job descriptions for open positions, provide for anonymous online and phone reporting of employment discrimination, create a fair paycheck workplace certificate program, and prohibit wage discrimination based on specified characteristics and attributes.

House Bill 5618 would amend 1978 PA 390, known as the wages and fringe benefits act, to add provisions regarding employee wage disclosure.

Currently, an ***employer*** cannot explicitly require an employee to refrain from disclosing their wages as a condition of their employment, require an employee to sign a document denying them the right to disclose their wages, or discharge, formally discipline, or otherwise discriminate against for job advancement an employee who does so.

Under the wages and fringe benefits act, ***employer*** means an individual, sole proprietorship, partnership, association, or corporation, public or private; the state or a state agency; a city, county, village, township, school district, or intermediate school district; an institution of higher education; or an individual acting directly or indirectly in the interest of an employer who employs one or more individuals. (Except as specifically provided in a franchise agreement between a franchisee and franchisor, the franchisee is considered the sole employer of workers for whom the franchisee provides a benefit plan or pays wages.)

The bill would further prohibit employers from implementing or engaging in a practice that discourages wage disclosure, such as including a statement in a written policy that discourages an employee from disclosing their wages.

Additionally, employers would be prohibited from asking or otherwise seeking information about a prospective employee's past wages and benefits, credit score, or credit history.

MCL 408.483a

House Bill 5619 would add a new section to the wages and fringe benefits act to require employers to create and disseminate job descriptions for open positions. The bill would go into effect 90 days after it is enacted.

For each position, employers would be required to create and maintain a job description that includes all of the following:

- A list of the position's essential duties and responsibilities.
- A description of the skills, training, and effort required to perform the job.
- The working conditions and schedule under which the job is performed.
- Salary information, including any pay scales.

Employers would have to make an applicable job description available to an applicant during the recruitment, hiring, and promotion processes and to any employee who requests it.

Employers could not apply a revised job description to a current employee until the employee has had an opportunity to review and initial it.

Proposed MCL 408.479a

House Bill 5620 would amend the wages and fringe benefits act to prescribe penalties for a violation of the job description requirements proposed by House Bill 5619. The penalties would apply in addition to other applicable sanctions and remedies under the act.

For a first violation, the Michigan Department of Labor and Economic Opportunity (LEO) would have to issue a notice to the employer requiring the employer to correct the violation within 14 days of receiving the notice.¹ If the employer fails to correct the violation, they would be subject to a civil fine of up to \$500.

For a second violation, the employer would be subject to a fine of up to \$5,000. A third violation would result in a fine of up to \$15,000, and subsequent violations would result in a fine of up to \$25,000.

If an individual is aggrieved by a violation of the job description requirements, they could bring an action to recover actual damages. A prevailing plaintiff would be awarded the greater of actual damages or \$10,000, in addition to actual costs and attorney fees.

The bill cannot take effect unless HB 5619 is also enacted.

MCL 408.488

¹ Executive Reorganization Order No. 2019-3 transferred the Michigan Department of Licensing and Regulatory Affairs' responsibilities under 1978 PA 390 to LEO. See: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-125-1998.pdf>.

House Bill 5621 would amend the Elliott-Larsen Civil Rights Act to require the Michigan Department of Civil Rights to establish online and telephone platforms to receive reports of violations and to require the department to protect the anonymity of an individual involved in an investigation to the greatest extent possible.

Generally speaking, the act prohibits discriminatory practices, policies, and customs based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status [having children], or marital status. These are often called “protected categories” with reference to the act. The act is enforced by private lawsuits and by the Michigan Civil Rights Commission (MCRC), which through the Michigan Department of Civil Rights investigates and acts on discrimination complaints.

Under the bill, the Department of Civil Rights would have to maintain a public website that includes information about rights under the Elliott-Larsen Civil Rights Act and a link to an easy-to-use electronic form for reporting a violation. The website would have to prominently display a phone number for a telephone line to be maintained by the Department of Civil Rights exclusively for receiving reports of violations. Both the electronic form and phone line would have to allow for anonymous reporting.

Additionally, when conducting an employment discrimination investigation, the Department of Civil Rights would have to follow procedures to ensure that the identity of an individual who has alleged a violation or has assisted or participated in an investigation remains anonymous to the greatest extent reasonably possible.

MCL 37.2602

House Bill 5623 would amend the Elliott-Larsen Civil Rights Act to require the Michigan Department of Civil Rights to establish online and telephone platforms to receive reports of violations, require the department to protect the anonymity of an individual involved in an investigation to the greatest extent possible, and to require certain employers to notify their employees of applicable wage discrimination laws and of avenues to report a violation. The bill would take effect 90 days after it is enacted.

Under the bill, the Department of Civil Rights would have to maintain a public website that includes information about rights under the Elliott-Larsen Civil Rights Act and a link to an easy-to-use electronic form for reporting a violation. The website would have to prominently display a phone number for a telephone line to be maintained by the Department of Civil Rights exclusively for receiving reports of violations. Both the electronic form and phone line would have to allow for anonymous reporting.

When conducting an employment discrimination investigation, the Department of Civil Rights would have to follow procedures to ensure that the identity of an individual who has alleged a violation or has assisted or participated in an investigation remains anonymous to the greatest extent reasonably possible.

If an employer employs at least 50 individuals at a single site in Michigan at any time during a calendar year, they would have notify employees of the following:

- That it is illegal under federal law to pay employees different wages for the same work because of an employee’s race, color, religion, sex, national origin, age, genetic information, or disability.

- That it is illegal under state law to pay employees different wages for the same work because of an employee’s religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.
- That an employee who believes their employer has violated the law requiring equal pay may contact the Michigan Department of Civil Rights.
- As described above, the telephone number to report a violation of the act and the address of the website to access the reporting form.

The Department of Civil Rights would have to approve the form of the notice and could require additional information regarding employees’ rights under state law.

The information would also have to be posted at the work site in a conspicuous location where employees could conveniently read it.

An employer who violates these provisions could be liable for a civil fine of up to \$100.

MCL 37.2602 (amended); MCL 37.2202b (proposed)

House Bill 5625 would create a new act, the “Fair Paycheck Workplace Certificate Act,” that would allow employers of any size to apply for and receive a “fair paycheck workplace certificate” if they compensate employees with *protected attributes or characteristics* at substantially the same rate as their other employees.

Protected attribute or characteristic would mean the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status of an individual, or any other attribute or characteristic that is protected under the Elliott-Larsen Civil Rights Act.

Certificate application and approval

To obtain the certificate, an employer would have to submit a signed application to the director of LEO or their designee. The employer would also have to submit an application fee, as set by the LEO director or designee.²

An application would have to include the following information, in addition to any other information determined to be necessary by the LEO director or designee:

- The employer’s name and address.
- The total number of employees.
- The known protected attributes or characteristics of each employee.
- Payroll records showing the gross compensation paid to each employee during the immediately preceding calendar year.³

(Information provided for the purpose of obtaining a certificate would be exempt from disclosure under the Freedom of Information Act.)

² The application fee could not be more than the amount determined to be necessary to administer the act.

³ An employee’s compensation would include any commissions, bonuses, or tips, but not the value of any fringe benefits.

If the employer pays the application fee and includes all the required information, they would receive a fair paycheck workplace certificate if the LEO director or designee determines based on that information that there is a less than 5% difference between the average gross compensation paid to employees with different protected attributes or characteristics. The LEO director or designee would have to either issue the certificate or provide a rejection notice explaining the reason for the rejection within 15 days after receiving a completed application and fee.

An initial certificate would expire after six months. An employer could renew a certificate by submitting the application fee and a signed application to the LEO director or designee, and subsequent certificates would be valid for one year.

Database

The LEO director or designee would have to establish and maintain a free, public, and online database of employers that have been issued a certificate that includes each employer's name and address, in addition to whether the certificate is current or expired.

Penalties

An employer would be prohibited from claiming to possess a fair paycheck workplace certificate or otherwise indicate that they possess such a certificate if they do not have one or if their certificate has expired. An employer who violates this provision would be subject to a civil fine of up to \$1,000, and the attorney general or appropriate county prosecutor could bring an action to collect the fine. Fines would be deposited in the general fund.

Administration

The LEO director or their designee would have to promulgate rules to implement the act in accordance with the Administrative Procedures Act, which would have to include the manner in which an application must be submitted and the amount of the application fee. Any determinations or appeals under the act would have to be made in accordance with the Administrative Procedures Act.

House Bill 5622 would amend the Management and Budget Act to require state construction and procurement contracts to be awarded to employers that have received a fair paycheck workplace certificate, as proposed by House Bill 5625. The bill cannot take effect unless House Bill 5625 is also enacted.

The Department of Technology, Management, and Budget (DTMB) and any state agency, as applicable would be prohibited from awarding a contract for the construction, repair, remodeling, or demolition of facilities or a state procurement contract to an employer without a fair paycheck workplace certificate.

(The bill would also remove a reference to 1945 PA 302, known as the emergency powers of the governor act, which was struck down by the Michigan Supreme Court in 2020 as an unconstitutional delegation of legislative power.)

MCL 18.1241 and 18.1261

House Bill 5624 would add a new section to the wages and fringe benefits act to prohibit wage discrimination based on several specified attributes and characteristics, such as race and sex, and to repeal the Improved Workforce Opportunity Act's prohibition on sex-based wage discrimination.

Under the bill, employers would generally be prohibited from paying an employee at a different wage rate than is paid to another employee because of a *protected attribute or characteristic* for equal work on jobs that require equal skill, effort, and responsibility and are performed under similar working conditions. An employer could not reduce employee pay rates to comply with these provisions.

Protected attribute or characteristic would mean the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, marital status of an individual, or any other attribute or characteristic that is protected under the Elliott-Larsen Civil Rights Act.

Employers could set wages in accordance with a seniority system, a merit system, or other system that measures earnings by quantity or quality of production, or based on a factor other than a protected attribute or characteristic.

Additionally, the bill would repeal section 13 of the Improved Workforce Opportunity Wage Act, which currently prohibits sex-based wage discrimination for equal work.⁴

MCL 408.483b (proposed); MCL 408.943 (repealed)

House Bill 5626 would amend the Michigan Penal Code to expand the prohibition against wage discrimination based on sex to include other protected attributes or characteristics.

Currently, employers are prohibited from discriminating in the payment of wages between sexes for individuals who are similarly employed, and an employer who violates this prohibition is guilty of a misdemeanor. (Differences in wage rates based on other factors do not violate this provision.)

House Bill 5626 would additionally prohibit wage discrimination between individuals of different religions, races, colors, national origins, ages, heights, weights, marital statuses, or other characteristics or attributes protected under the Elliott-Larsen Civil Rights Act who are similarly employed. Violations would be a misdemeanor, with maximum fines set at the following:

- \$5,000, if the employer has fewer than 16 employees.
- \$10,000, if the employer has between 16 and 50 employees.
- \$20,000, if the employer has more than 50 employees.

The bill would also provide that a person could be charged with, convicted of, or punished for any other violation of law arising out of the violation.

⁴ The Improved Workforce Opportunity Wage Act applies to employers that are a person, firm, or corporation, including public sector entities, that employ at least two employees at any time within a calendar year.

Additionally, the bill would remove language prohibiting an employer from assigning any task to a female that is disproportionate to her strength or employing her in any place detrimental to her morals, her health, or her potential capacity for motherhood.

The bill would take effect 90 days after it is enacted.

MCL 750.556

House Bill 5627 would amend the Elliott-Larsen Civil Rights Act to allow a court to award additional damages to a plaintiff as a remedy for wage discrimination.

A person alleging a violation of the Elliott-Larsen Civil Rights Act can bring a civil action for appropriate injunctive relief, damages, or both. House Bill 5627 would provide that a claim for an action would accrue on the date that the person alleging the violation acquires actual knowledge of the violation.

The bill would also allow a court to award treble damages (additional punitive damages based on the amount of actual damages) if it determines that an employer has done any of the following in violation of the act:

- Failed or refused to hire or recruit, discharged, or otherwise discriminated against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.
- Limited, segregated, or classified an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of the employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.
- Segregated, classified, or otherwise discriminated against an individual on the basis of sex with respect to a term, condition, or privilege of employment, including a benefit plan or system.
- Treated an individual affected by pregnancy, childbirth, the termination of a pregnancy, or a related medical condition differently for any employment-related purpose from another individual who is not so affected but similar in ability or inability to work, without regard to the source of any condition affecting the other individual's ability or inability to work.

The bill would take effect 90 days after it is enacted.

MCL 37.2801

FISCAL IMPACT:

House Bill 5618 would have an indeterminate fiscal impact on the state and on local units of government. If an employer violates provisions of the bill, the employer could be convicted of a misdemeanor and/or assessed a civil penalty of up to \$1,000 by the department. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local

misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Civil fine revenue would be credited to the state general fund.

House Bill 5619 would require employers to create and maintain job descriptions for each position. To the extent that units of state and local government do not already maintain job descriptions that comply with the provisions of the bill, they may incur indeterminate costs to attain compliance.

House Bill 5620 would have an indeterminate fiscal impact on the state and on local units of government. If an employer violates provisions of the bill, the employer could be ordered to pay a civil fine. The amount of the civil fine ordered would depend on if the violation is a first, second, third, or subsequent violation. Civil fine revenue would be credited to the state general fund. The number of fines that would be ordered under provisions of the bill is not known. The fiscal impact on local court systems would depend on the number of actions brought to recover actual damages and how actions affected court caseloads and related administrative costs.

House Bill 5621

The Department of Civil Rights would likely be able to support the requirements of the bill with existing staff and resources. The bill would have no fiscal impact on local units of government. If existing staff is not able to provide the required services, the annual cost of a civil rights representative is \$157,000.

House Bill 5622 would likely result in higher costs to the state by reducing the number of eligible competitive bidders on contracts for goods and services related to state construction projects. The impact on competition among bidding contractors would be expected to taper in future years as more vendors apply for and receive fair paycheck workplace certificates.

It is not yet known what recourse the Department of Technology, Management, and Budget would have for contracting for construction projects immediately following the effective date of the bill if LEO has not yet implemented the requirements under House Bill 5625 to process applications for fair paycheck workplace certificates, to issue the certificates, and to create a database of employers who have received certificates to share with DTMB's central procurement office. Delays in executing construction contracts and projects during this initial period may also raise costs for state projects or jeopardize federal grant funding opportunities.

House Bill 5623

The Department of Civil Rights would likely be able to support the requirements of the bill with existing staff and resources. The bill would have no fiscal impact on local units of government. If existing staff is not able to provide the required services, the annual cost of a civil rights representative is \$157,000.

The bill also would have an indeterminate fiscal impact on the state. If an employer violates provisions of the bill, the employer could be ordered to pay a civil penalty of up to \$100. Civil fine revenue would be credited to the state general fund.

House Bill 5624 would have an indeterminate fiscal impact on the state and on local units of government. If an employer violates provisions of the bill, the employer could be convicted of a misdemeanor and/or assessed a civil penalty of up to \$1,000 by the department. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Civil fine revenue would be credited to the state general fund.

House Bill 5625 would have significant fiscal implications for the Department of Labor and Economic Opportunity. Under the bill, LEO would be responsible for processing applications for fair paycheck workplace certificates within 15 of receiving applications and associated fees, issuing certificates to qualifying applicants, and establishing and maintaining a database of employers that have been issued a fair paycheck workplace certificate. The magnitude of these costs is currently indeterminate. The bill would allow LEO to establish an application fee for fair paycheck workplace certificates through the administrative rules process, and the department would conceivably establish the fee at a level sufficient to offset the department's incurred costs under the bill.

Under the bill, employers that falsely claim to possess a fair paycheck workplace certificate would be subject to a civil fine of up to \$1,000. Any revenue collected from the civil fines would be deposited into the state's general fund.

House Bill 5626 would have an indeterminate fiscal impact on the state. If an employer violates provisions of the bill, the employer could be convicted of a misdemeanor and assessed a fine based on the number of employees. Civil fine revenue would be credited to the state general fund.

House Bill 5627 would have no direct fiscal impact on the state or local units of government. However, the state and local units of government may be subject to increased costs if they are an employer found to be in violation of the bill due to being subject to treble damages, or additional charges up to three times the amount of actual damages. There are 47,546 civil service employees in the state of Michigan in FY 2023-24.

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