House Legislative Analysis Section

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EMPLOYMENT DISCRIMINATION

House Bill 4150 (Substitute H-2)
House Bill 4151 with committee amendment
First Analysis (12-4-90)

Sponsor: Rep. Joseph Young, Sr.
Committee: Labor

THE APPARENT PROBLEM:

The policy of equal pay for equal work is an extension of national anti-discrimination policies formulated during the last three decades. The history of pay equity began with the passage of two laws. The Equal Pay Act of 1963 prohibited employers from paying men more than women for doing the same job. Title VII of the Civil Rights Act of 1964 prohibited wage discrimination on the basis of race, color, sex, religion, or national origin. These laws, however, only protected women from discrimination when they were working in the same jobs as men. In 1981, the U.S. Supreme Court made it clear that Title VII prohibited wage discrimination even when the jobs were not identical in Gunther v County of Washington, and affirmed this decision in 1986 in Bazemore v Friday. These rulings eliminated some of the more blatant forms of employment discrimination, but one overriding problem remains: the wage gap between men and women is not closing. According to U.S. Department of Labor statistics, women's average earnings as a percentage of men's were 60.8 percent in 1960, 59.4 percent in 1970, and 60.1 percent in 1980. According to U.S. Census statistics, the percentage for 1989 was 68.6 percent. Many feel that this obvious disparity in wages is due to "occupational segregation." This refers to the fact that traditional or predominantly female jobs are paid less than traditional or predominantly male jobs, even though the former may require equal — or greater — skill, effort, responsibility and education. A 1985 Minnesota Commission on the Economic Status of Women report provided some examples of this pattern in a 1981 ranking of state jobs, as follows:

SEX	CLASS TITLE	MAXIMUM MONTHLY SALARY "MALE JOBS"	"FEMALE JOBS"
M	Delivery Van Driver	$1,382	
F	Clerk Typist 2		$1,115
M	Grain Sampler I	$1,552	
F	Microfilmer		$1,115
M	Auto Parts Technician	$1,505	
F	Dining Hall Coordinator		$1,202
M	Grain Inspector 2	$1,693	
F	Administrative Secretary		$1,343
M	Radio Commun. Supvr	$1,834	
F	Typing Pool Supvr		$1,373

Many feel that, if women are to achieve economic parity with men, then it must be determined whether the salaries of female dominated jobs accurately reflect their value by evaluating these positions to determine whether they are underpaid relative to their worth to the employer. This method of comparing jobs is called "comparable worth." Under this concept, a single job evaluation system would serve to evaluate all the jobs within a workplace. Jobs that are dissimilar in content would be compared by objective categories such as skill, effort, responsibility, and working conditions. Points are assigned for factors that fall within these categories, and jobs that have similar numbers of points are compared to see if the salaries are similar, to see, for example, if a "woman's job," that receives 200 points, is paid the same salary as a "man's job" that receives 200 points.

The comparable worth concept has been incorporated into a new system to overhaul the job evaluation and classification system used for state jobs. A system has been established to evaluate jobs that do not require college degrees, and one for jobs that do require college degrees is being implemented. A Comparable Worth Task Force, appointed by the Civil Service Commission in 1985, called for a "comprehensive program for achieving pay equity . . . designed to eliminate or reduce gender based wage disparities without jeopardizing the financial integrity of the state or its ability to provide necessary services," and an advisory committee, composed of representatives from labor and management, devised the system, which has already resulted in two bargained contracts for eligible employees. As a first step toward achieving pay equity in the private sector, proponents of the comparable worth concept suggest that it be incorporated into Michigan's civil rights act. It is also argued that, since history has shown that there is a difference in wages between men and women, and between races, it can be assumed that there is also a difference in wages between handicappers and non-handicappers, and that the protections that the policy of comparable worth would afford women should also be extended to handicappers under the Handicappers Civil Rights Act.

THE CONTENT OF THE BILLS:

House Bills 4150 and 4151 would amend the Michigan Handicappers' Civil Rights Act and the Elliott-Larsen Civil Rights Act, respectively, to define as a violation of the acts an employer's failure to provide equal compensation for comparable work.

Under House Bill 4150, an employer could not fail or refuse to provide compensation equally for work of comparable value in terms of the composite skill, responsibility, effort, education or training, and working conditions, because of a handicap that was unrelated to the individual's ability to perform the duties of a particular job or position (MCL 37.1103 et al.). Under House Bill 4151, an employer could not fail or refuse to provide equal compensation for work of comparable value because of an employee's religion, race, color, national origin, age, sex, height, weight, or marital status. The bill would also specify that failure to provide equal compensation under the act would be grounds for bringing, or continuing, a cause of action for a violation that occurred before the bill's effective date (MCL 27.2102 et al.).

OVER

FISCAL IMPLICATIONS:

According to the Department of Labor, the concept of comparable worth is currently being implemented gradually for state classified employees, and so the bill would have no fiscal implications for the state. According to the National Committee on Pay Equity, implementing comparable worth systems typically cost employers about one percent of payroll. (12-4-90)

ARGUMENTS:

For:

The bills are necessary as a final step to end wage discrimination against women and handicappers, and to move the wage policies of the state's private sector in the direction that the public sector is moving. The Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 did not end wage discrimination, they only protected women from discrimination when they were working in the same jobs as men, and even those protections are not afforded a handicapper. It makes sense for Michigan to act now, rather than bear the inevitable costs it will incur if it postpones this action until it is forced to react to public pressures.

Pay equity has become the issue of the '80s. In the public sector, the states of Michigan, Minnesota, Iowa, Oregon, New York, Wisconsin, and Washington have implemented broad-based plans to address wage discrimination; twenty-three states have begun or completed pay equity studies; and twenty states have made pay equity adjustments to one or more female-dominated job classifications through collective bargaining or litigation. In Michigan, companies with plants in Ontario will soon have to comply with that province's Pay Equity Act. Companies with 500 or more employees must have pay equity plans posted by January 1, 1990, and wage adjustments implemented by January 1, 1991. (Smaller companies have more time to comply.) If the provisions of the bills were to take effect now, thousands of dollars could be saved in the litigation costs that will surely follow if other Michigan companies drag their feet in following Ontario's example.

For:

The state spends approximately $50 million in workers compensation and other benefits to persons classified as handicappers, many of whom want to work. The bills, by prohibiting wage discrimination against persons with handicaps, would allow these people to receive full compensation for their work, and would reduce state spending on benefit programs. In turn, the state's revenues would increase from the additional taxes it would receive.

Against:

It is hard to believe, as the rest of the world struggles to achieve a free market economy, that it should be suggested that Michigan move, instead, into an economic system of artificially contrived wage rates. Government interference in this process would create many difficulties. In the first place, if wages for certain job categories had to be artificially raised, this would result in increased wage costs to employers. In the second place, the administrative costs created by the need for complicated analyses of jobs and increased recordkeeping would be enormous.

Against:

If government imposes a nondiscriminatory wage policy it will disrupt the free market system that has traditionally set wages. Comparable worth advocates suggest that a stenographer should be paid the same wages as a laborer, and that a job evaluation that measured certain components of a job and assigned point values to each would prove this. However, the truth is that job evaluations are subjective: the only reliable indicator of the value of a job is the wage an employer is willing to pay, and wages are determined by the law of supply and demand. For example, if stenographers' wages are too low, they will move into other fields, and wages will be bid up for the services of those who remain. This is a fundamental principle of a free market economy.

Response: The market theory of supply and demand in establishing wages is a myth. The free market does not exist. The government has, in the past, passed minimum wage laws, health and safety laws, government subsidies, tax breaks for business, protective tariffs, price supports, and other laws that either sustained, limited, or improved the market. In particular, the market rule of supply and demand has not worked for jobs that are predominantly female: shortages in "female" jobs have not resulted in higher wage rates for those jobs; if it did, then nurses would be very well paid, since there has been a shortage of nurses for several years. The reality is that the wage for a worker in any job is determined by the interaction of three forces: market conditions, cultural conventions, and institutional practices. Historical patterns of discrimination embedded in these forces are reflected in the wage differences between men and women.

Against:

There is no way that different jobs can be compared and contrasted in order to achieve a balanced and just pay scale. One cannot compare apples and oranges.

Response: Differences can be quantified according to skill, experience, responsibility, education, and other criteria. If this were not true, then how is it determined that an air traffic controller should be paid more than a person who parks cars? Employers have used some kind of formal job evaluation plan for years to determine the relative worth of different jobs.

Against:

As written, the bill is too vague. It gives no definition of "comparable worth" that would tell an employer how to assess a wage scale to find out if he or she were in compliance with the act, and no rules or guidelines for performing a nondiscriminatory job evaluation study.

Response: The bill only requires that companies pay women and handicappers equal compensation for comparable work; it does not require employers to have job evaluation studies performed. If, however, employees were unhappy with a pay scale, a company would have to be able to explain how it evaluated jobs.

Against:

Because most women work for a secondary income, women aren't committed workers. They drop out of work to have children, and then prefer to work part-time, or in jobs with flexible hours that can be worked around their families.

Response: According to statistics, the work patterns of the younger generation of women show that the majority do not drop out of the workforce to have children and that they continue in full-time employment. Nowadays, the typical two-parent family requires two earners to stay financially sound. Typical single-parent families, on the other hand, are headed by women. Without adequate salaries, these women cannot provide for their families.

MORE

POSITIONS:

The Department of Social Services supports the bills. (12-3-90)

The United Auto Workers (UAW) supports the bills. (12-3-90)

The Michigan Education Association supports the bills. (12-3-90)

Representatives of the following testified before the House Labor Committee in support of the bills: (11-28-90)

Department of Labor, Office of Women and Work
Department of Civil Rights
Michigan State AFL-CIO
American Association of University Women, Michigan Division
National Association of Social Workers
Michigan Civil Rights Commission
American Civil Liberties Union
Michigan Federation of Teachers
Michigan Pay Equity Network
League of Women Voters
Michigan Women's Assembly
Michigan Federation of Business and Professional Women
American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO Council 25

The Michigan State Chamber of Commerce opposes the bills. (12-3-90)

The Michigan Merchants Council opposes the bills. (12-3-90)

The National Federation of Independent Business opposes the bills. (12-3-90)

The Michigan Retailers Association opposes the bills. (12-3-90)

The Small Business Association of Michigan opposes the bills. (12-3-90)

Representatives of the following testified before the House Labor Committee in opposition to the bills: (11-28-90)

Michigan Manufacturers Association
American Society of Employers

K-Mart Corporation has no position on the bills. (12-3-90)

General Motors Corporation has no position on the bills. (12-3-90)

The Michigan Commission on Handicapper Concerns has no position on the bills. (12-3-90)