



Rhode Island Society for Human Resource Management State Chapter

Statement of Gregory Tumolo, Esq.

On behalf of the Rhode Island Society for Human Resource Management State Chapter

Submitted to the Senate Committee on Labor

S2475 – An Act Relating to Labor Relations -Fair Employment Practices

March 21, 2018

To Chairperson Fogarty, Vice Chairperson Lombardo, and the Honorable Members of the Senate Committee on Labor:

My name is Gregory Tumolo and I currently serve in the role of Co-Director of State Legislative Affairs for the Rhode Island Society for Human Resource Management State Chapter (“RI SHRM”). RI SHRM is an affiliate of the Society for Human Resource Management (“SHRM”), the world’s largest HR professional society representing more than 285,000 members in more than 165 countries around the world. I am grateful for the opportunity to provide testimony to the Senate Labor Committee on **S2475 – An Act Relating to Labor and Labor Relations – Fair Employment Practices**.

I testify today on behalf of RI SHRM, a volunteer organization representing more than 800 human resource professionals throughout the State of Rhode Island. Our members are a true cross-section of the Rhode Island economy, coming from such diverse sectors as education, government, healthcare, hospitality, manufacturing, non-profit, professional services, small business, and technology. Many of our members are charged by their employers with communicating compensation decisions to applicants and employees; educating applicants and employees on their employer’s compensation practices and philosophies; and designing, developing, and implementing compensation packages to recruit and retain a diverse and talented workforce.

RI SHRM is troubled by the fact that pay disparities between workers in various demographic groups continue to persist, despite state and federal legislative efforts to eliminate wage discrimination in the workplace. RI SHRM believes that employees should be compensated equitably and that pay disparities based upon discriminatory considerations must be identified and remedied as quickly as possible.

S2475 represents an important step toward ensuring pay equity for all Rhode Islanders. However, RI SHRM cannot support the legislation in its current form for the following reasons:

1. The legislation’s “comparable work” performed under “similar working conditions” standard is unworkable and inconsistent with federal law

Generally speaking, jobs that have the same functions, that are performed under the same working conditions, and that require the same knowledge, skills, and abilities must be compensated equally, with allowable pay differences based on legitimate, non-discriminatory factors such as education, experience, geographic location, performance, and seniority. This “equal pay for equal work” standard allows employers to compensate employees equitably while providing them with the flexibility that they need to reward applicants and employees based on bona fide, job-related characteristics.

RI SHRM opposes legislative efforts to equate jobs that are not, in fact, equal. In its current form, S2475 melds elements of California’s Fair Pay Act (viewing “substantially similar” work as a “composite of skill, effort, and responsibility”) and elements of Massachusetts’ Pay Equity Act (use of “comparable work” standard) into a single, unworkable standard. This hybrid standard represents a substantial departure from the federal law standard of comparing employees doing the same job under the same or substantially similar working conditions to determine whether a discriminatory pay disparity exists. If S2475 becomes law, Rhode Island employers would have to navigate different pay equity standards at the state and federal levels.

In addition, by equating jobs that are unequal, S2475’s hybrid standard would make it more difficult for employers and enforcement agencies to understand how much of a pay disparity between groups is attributable to discriminatory considerations, as opposed to lawful pay practices and other workplace dynamics that are difficult to measure across “comparable” jobs.

The following charts may serve to illustrate the above points.

The first chart contains the results of a hypothetical pay analysis performed by an HR professional under the prevailing federal law standard: equal pay for equal work. For clarity, the below pay analysis is focused on identifying and addressing pay differentials based on gender:

Exempt Job Titles					
Job Title	Number of Female Employees	Number of Male Employees	Average Female Pay	Average Male Pay	Is Differential Statistically Significant?
Vice President	4	4	\$121,000	\$148,000	Not Significant
Manager	10	16	\$53,000	\$66,700	Not Significant
Supervisor	9	7	\$23,000	\$31,700	Not Significant
Non-Exempt Job Titles					
Job Title	Number of Female Employees	Number of Male Employees	Average Female Pay	Average Male Pay	Is Differential Statistically Significant?
Specialist	18	12	\$18,000	\$22,000	Not Significant
Associate	22	10	\$16,000	\$18,700	Not Significant
Truck Driver	5	26	\$20,000	\$26,500	Not Significant

While the above pay analysis reveals that exempt and non-exempt female employees earn less than their male counterparts, the pay differential between females and males is not statistically significant and may be attributable to legitimate, non-discriminatory factors. For example, male truck drivers may receive higher pay because they have more relevant experience since obtaining their commercial drivers' licenses.

The second chart contains the results of a hypothetical pay analysis using the “comparable work” standard. This pay analysis is also focused on identifying and addressing pay differentials based on gender:

Exempt Workforce					
Job Titles	Number of Female Employees	Number of Male Employees	Average Female Pay	Average Male Pay	Is Differential Statistically Significant?
Vice President / Manager / Supervisor	23	27	\$50,500	\$70,500	<u>Significant</u>
Non-Exempt Workforce					
Job Titles	Number of Female Employees	Number of Male Employees	Average Female Pay	Average Male Pay	Is Differential Statistically Significant?
Specialist / Associate / Truck Driver	45	48	\$17,000	\$24,000	<u>Significant</u>

By lumping together “comparable” jobs such as Vice President and Supervisor—jobs that involve very different functions and that require very different skill sets and qualifications—a statistically significant pay differential emerges between the employer’s male and female salaried, exempt employees. While this pay differential may have absolutely nothing to do with gender, it is difficult to gauge what portion of the differential is attributable to legitimate vs. unlawful considerations of gender.

2. The legislation lacks a “safe harbor” to protect employers that conduct good faith, reasonable self-evaluations of their pay practices to foster pay equity

The Massachusetts Pay Equity Act—a statute upon which S2475 appears to have been modeled, at least in part—contains an important provision that S2475 currently lacks: a “safe harbor” provision. The Massachusetts law provides a complete defense to any employer that, within the previous three (3) years and before an action is filed against it, has conducted a good faith, reasonable self-evaluation of its pay practices. To be eligible for this affirmative defense, the self-evaluation must be reasonable in both detail and scope. The employer also must show reasonable progress toward eliminating any impermissible wage differentials that the self-evaluation may reveal.

RI SHRM believes that a similar “safe harbor” provision is essential in this legislation. The fastest path to pay equity is finding out whether a problem exists and then working to rectify it. S2475 should incentivize employers to conduct voluntary self-evaluations of their pay practices and

actively work to address any discrepancies based on considerations of race, gender, or other protected class status. While employers should not be required to conduct such self-evaluations or penalized for choosing not to do so, S2475 should incentivize employers that do the right thing.

3. The legislation’s requirement that employers explain and justify the entire wage differential is unreasonable and imposes an undue burden

In its current form, S2475 requires Rhode Island employers to demonstrate that the entire wage differential between groups of employees is based on legitimate, non-discriminatory factors (e.g. education, experience, geographic location, performance, qualifications, and seniority). This is the same unforgiving standard employed by California in its Fair Pay Act. Respectfully, RI SHRM suggests that this standard is unreasonable and would impose an undue burden on Rhode Island employers—including those that are actively working to address pay disparities identified in good faith self-evaluations.

Oftentimes, is it difficult for employers to understand how much of a pay disparity between groups of employees is attributable to unlawful discrimination as opposed to legitimate pay practices and other workplace dynamics. Accordingly, liability should not be imposed on employers who, while acting reasonably and in good faith, are unable to explain and justify each and every penny of a wage differential. Rather, liability should be imposed only if the wage differential between groups is statistically significant and is not otherwise explainable by the consideration of bona fide, job-related factors.

3. Conclusion

In summary, while RI SHRM vigorously supports equal pay for equal work and believes that unlawful pay disparities should be addressed promptly, S2475 in its current form does not strike the appropriate balance between the interests of employers and employees. Specifically, the proposed legislation: (1) would require Rhode Island employers to navigate different pay equity standards at the state and federal levels (i.e. “equal pay for equal work” vs. “comparable work” under “similar working conditions”); (2) lacks a “safe harbor” to incentivize employers to conduct proactive pay analyses to identify and address unlawful pay disparities; and (3) would punish employers who cannot explain and justify the entire pay differential between groups.

RI SHRM stands ready to assist members of the Senate Committee on Labor to address these shortfalls in the current bill in the hope that it may be in a position to support the bill, if amended. Thank you for the opportunity to share our views on this important issue.

Respectfully submitted by:

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