

If passed HB17-1269 would extend wage transparency protections to all classes of workers in the State of Colorado. In plain speak it would prevent the termination of an employee for discussing their wage with co-workers. Classes of workers this bill extends protections to are farm workers, domestic service employees, employees of religious organizations, and all public sector employees (federal, state, municipal).<sup>1</sup>

Under current Colorado law “No employer may discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with any employee or other person because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wages; require as a condition of employment non disclosure by an employee of his or her wages; or require an employee to sign a waiver or other document that purports to deny an employee the right to disclose his or her wage information.”<sup>2</sup>

However there are explicit coverage exemptions written into Colorado law. Coverage “Exempts employees in domestic service, employers that are religious associations, and employers not covered by the federal National Labor Relations Act (NLRA).”<sup>3</sup> Workers that are exempt from this law, depending on what rules their employer has, are not free to discuss their wages with others. This bill amends Statute 24-34-402(1)(i) to eliminate the exemption granted to employers under the NLRA.

This bill would grant wage transparency protection to approximately 234,375 State and Municipal government employees.<sup>4,5</sup> This number includes educators. There are an additional

---

<sup>1</sup> “Equal Pay and Pay Transparency Protections”. *US Department of Labor*. Accessed Mar 2017

<sup>2</sup> Colo. Rev. Stat. § 24-34-402(1)(i).

<sup>3</sup> Colo. Rev. Stat. §§ 24-34-401(2)-(3), 24-34-402(1)(i).

<sup>4</sup> “States with Most Government Employees: Totals and Per Capita Rates” *Governing Magazine*. 2014

40,007 non military federal employees that this bill would affect.<sup>6</sup> This bill would also cover supervisors that are not covered by the NLRA. According the the Bureau of Labor Statistics there are 109,600 workers in management occupations in Colorado.<sup>7</sup> Finally an estimated 3,770 farm workers would be covered as well.<sup>8</sup> There is no data on how many domestic service, independent contractors, or religious organization workers there are in Colorado.

Government has the right to intervene the labor market when a market imperfection exists. In this case it is a government mandated exemption that produces the market imperfection. Not allowing a worker to openly discuss their levels of compensation with their peers constricts the ability of the worker to receive fair compensation for their services. Passing this bill will eliminate this government mandated market imperfection.

Complete information is defined as all involved (consumers and producers) in a market have perfect knowledge of price, quality, and production methods. Complete information allows employees to make the optimal decisions for themselves with respect to where they want to be employed, maximizing their utility or happiness.

The exemptions of workers from wage transparency protections mean there is incomplete information given to the worker who is not covered under current law. The fear of retaliation from their employer for discussing their peers wages lessens the workers ability to strike a fair wage bargain. This also gives an unfair advantage to the employer.

It makes little economic sense to continue exempting these workers from wage transparency protections. Public sector salaries are already available to the public. Supervisors

---

<sup>5</sup> US Census Bureau, 2015 Annual survey of Public Employment and Payroll

<sup>6</sup> Office of Personnel Management March, 2013

<sup>7</sup> “May 2015 State Occupational Employment and Wage Estimates Colorado”. Bureau of Labor Statistics. Modified March 30, 2016

<sup>8</sup> Ibid.

and farm workers are employees within firms just as much as any employee this law covers. As such, exempt employees should be afforded the ability to discuss their wage with coworkers without fear of reprisal.

There are negative impacts from a lack of wage transparency on the workforce. A study by Elena Belogolovsky of Cornell University and Peter Bamberger of Tel Aviv University found that pay secrecy negatively affects the performance of individuals who are less tolerant to inequality.<sup>9</sup> This same study also found that pay secrecy negatively affects the perception of the link between performance and pay in individuals intolerant to equity, which in turn decreases their performance.

This would appear to give employers incentive to share wages. However, there are detractors that feel sharing wage information has harmful effects on a business. Todd Zenger of the University of Utah argues that employees who find out they are paid less compared to their peers are more likely to depart their place of work.<sup>10</sup> He also argues that employee productivity falls when they feel that rewards are unfairly given to others.<sup>11</sup> Tim Low, a vice president at data firm PayScale, is a supporter of wage transparency but is concerned that a drawback of wage transparency is it reduces the flexibility of employers to attract top talent.<sup>12</sup>

In response to the first argument, a worker has every right to leave a place of employment if they feel they are not being compensated appropriately for their work. This is a decision for the worker to make. With transparent wages the employer is also free to find someone who would be

---

<sup>9</sup> Belogolovsky, Elena and Bamberger, Peter. "When Pay is Kept Secret, the Implications on Performance are Revealing." (2013).

<sup>10</sup> Zenger, Todd. "The Case Against Pay Transparency." *The Harvard Business Review*. Sept. 30, 2016.

<sup>11</sup> Ibid.

<sup>12</sup> Fisher, Anne. "The Pitfalls of Making Pay Transparent." *Fortune Magazine*. Oct 9, 2014.

willing to work for the wage offered. Withholding information from a worker to keep them from quitting distorts the market. It leads to a suboptimal outcome for both the worker and employer.

As for the second argument, it is true productivity can fall if rewards are given in a manner that an employee feels is unfair. However, this is not an issue with the worker but with the firm. If an employee feels slighted it is up to the firm to explain to them why their coworkers deserve a bigger reward for their service. This argument is designed to protect the opportunity for a firm to take advantage of the market imperfection created by the government.

In response to the final argument that wage transparency reduces a company's flexibility to hire workers, using a market imperfection to hire workers will not lead to a profit maximizing outcome for employer or a utility maximizing outcome for the worker. If a company feels it can maximize its profit by hiring a more valuable worker then it should. If the resident worker takes issue with that then they are free to seek other employment, and the employer can hire someone else to do their job. "Reduces flexibility" is a euphemism for the inconvenience the employer faces when making this decision. It is not a valid reason for this market imperfection to continue.

Lastly, passing this bill has a negligible effect on the finances of the State of Colorado. According to the fiscal note prepared the State might see increased revenue from civil penalties. However the Judicial Department would have an increased workload and the Colorado Department of Labor might see an increase in requests for assistance. There would be an increased cost to State agencies to settle any claims as well.

Extending wage transparency protections to all workers in the State of Colorado will increase the total utility of society. Workers will be in a better position to negotiate a utility maximizing wage at little fiscal cost (if any) to the State. Therefore this bill should be passed.