



# S.2239 (Hoylman) / A.5773 (Glick)

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<b>BILL</b> S.2239 (Hoylman) / A.5773 (Glick)
<b>SUBJECT</b> Equal Pay Disclosure with Respect to State Contracts
<b>DATE</b> May 10, 2022
<b>OPPOSE</b>

The Business Council and its members fully support pay equity and compliance with federal and state laws prohibiting sex-based wage discrimination. However, as explained below, this bill would impose a significant and unjustified burden on businesses that contract with New York State; result in the collection of unreliable information by the Comptroller; and fail to safeguard the confidentiality of our member company's information. For these reasons The Business Council opposes this legislation.

### **Administrative Burden**

While the bill acknowledges that small employers (less than 100 employees) could not bear the administrative burden of this requirement, the burden is no less costly for larger employers. Certain state contractors are already required to provide detailed workforce utilization reports that identify employees by job category and standard occupational classification (SOC) Job Title. This is information similar to what many employers are required to submit to the U.S. Equal Employment Opportunity Commission (EEOC) on an annual basis.

However, instead of mirroring the federal requirement, this legislation will require substantially more administrative time to generate this information on an individual employee basis.

### **Definition of 'Pay Averages'**

According to the legislation, contractors must report 'pay averages' for each category of employee in the employer's entire workforce. The legislation leaves several significant compliance questions unanswered. Will this be W-2 reported income as required by the federal EEOC requirements? Is pay to be reported as an hourly rate? If so, how should the rate for exempt employees frequently working in excess of 40 hours per week be calculated? Will the 'pay' reflect the value of benefits? If so, how will the State account for the significant differences in benefit levels across vendors? Regardless, calculations of this type, duplicative of federal requirements, will provide an additional significant administrative burden and cost to New York employers.

Even if the collection process were not unduly burdensome, the results will not yield data that will be reliable for identifying compensation disparities based on discriminatory intent. W-2 income does not accurately reflect the compensation of

employees in the modern workplace. Business Council members have adopted compensation systems that include non-taxable components, such as 401k contributions, deferred stock, and options that are not reported as W-2 income in the year they are received. Company-specific compensation decisions are based on compensation practices that are not accurately captured in W-2 wage information. Nor will the data reflect bona fide factors other than sex, race and ethnicity that frequently allow for pay differences.

Pay within a job title, to say nothing of a job category, can vary dramatically based on a host of factors. Those factors – such as level of experience – will not be captured in the legislations data request, and as result, whatever data is collected will be inadequate for the State’s intended analysis.

### **Confidentiality of Data**

Business Council members also have serious concerns about the security of the data to be collected. Since this data “shall be available for public inspection and copying,” the “averaged pay data” and the “percent differences” by job category could – to the untrained eye - produce misleading information subjecting New York employers to potential damage to their reputation. In addition, this data, limited as it is, could give competitors an unfair advantage when it comes to things like bidding on contracts and identifying specific individual employees for job poaching.

### **Conclusion**

This legislation relies on employers to collect information in a format that will not likely be useful in the State’s efforts to identify potential pay discrimination, drastically underestimates the burden associated with such collection efforts and fails to provide safeguards for the data.

For the foregoing reasons, The Business Council of New York State, on behalf of its 3,200 members, respectfully opposes this legislation and urges that it not be adopted.