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TO: COUNCIL MEMBERS

FR: David Whitaker, Director 
Legislative Policy Division Staff

DA: March 31, 2022

RE: Equal Pay

This memorandum is in response to the request made by the Honorable Council Member Young II and Council Member Durhall requesting the Legislative Policy Division to provide information on Equal Pay.

The report will provide an overview including the federal Equal Pay Act of 1963, Equal Rights Amendment, and Michigan Improved Workforce Opportunity Wage Act (Act 337 of 2018).

Equal Pay Act of 1963

The Equal Pay Act (EPA) of 1963¹ is part of the Fair Labor Standards Act of 1938, as amended (FLSA). It is administered and enforced by the Equal Employment Opportunity Commission (EEOC) and prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.

The EPA² requires that men and women be given equal pay for equal work in the same establishment. The jobs themselves do not need to be identical, but must be substantially equal,

¹ U.S. Equal Employment Opportunity Commission, *The Equal Pay Act of 1963*. [The Equal Pay Act of 1963 | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/equal-pay-act-1963)

² The U.S. Equal Employment Opportunity Commission, *The Facts About Equal Pay and Compensation Discrimination*

relative to the job content. It is the job content, as opposed to the job title, that determines whether the jobs are substantially equal. The EPA provides that employers are not to pay unequal wages to men and women who are performing jobs that require substantially equal skill, effort, responsibility, and are performed under similar working conditions within the same establishment.

The EPA provides that pay differentials are permitted if they are based on “Affirmative Defenses,”³ consisting of seniority, merit, quantity or production, or a factor other than gender. The burden is on the employer to prove the application of the affirmative defenses. In making corrections to pay differentials, no employee’s pay may be reduced. The lower paid employee’s pay must be increased.

Penalties

Section 216 of the EPA provides that those convicted of violations are subject to a fine of not more than \$10,000 and/or imprisonment for not more than six (6) months. Employers who violate these provisions are liable to the employee(s) affected for the amount of the unpaid minimum wages, and any unpaid overtime compensation. Relief may include employment, reinstatement, promotion, and the payment of wages lost.

Equal Rights Amendment (ERA)

The Equal Rights Amendment is a proposed amendment to the U.S Constitution that would protect individuals from discrimination based on gender identity, gender expression, and/or sexual orientation. Congress originally passed the ERA in 1973. A three-fourths majority of states is required for the ratification. In January 2020, the state of Virginia became the 38th state to ratify the ERA, although the status is uncertain with some states having revoked or sunset their ratifications.⁴ The ERA is intended to enhance existing statutory protections against pay discrimination and bolster individual legal challenges of discriminatory conduct; noting that courts have interpreted one of these defenses—called the “factor other than sex” defense—so broadly that it has effectively become a loophole that allows some employers to successfully defend discriminatory pay practices that sound impartial or gender neutral on the surface. The ERA’s clear prohibition against sex discrimination could strengthen arguments to close the Equal Pay Act loophole.⁵

Women’s Comparative Earnings

According to the Bureau of Labor Statistics (BLS)⁶ report issued September, 2021, for the year of 2020, women who were full-time wage and salary workers had median weekly earnings that were 82 percent of those of male full-time wage and salary workers. In 1979, the first year for

³ The U.S. Equal Employment Opportunity Commission, *The Facts About Equal Pay and Compensation Discrimination*

⁴ Alabama, Louisiana, South Dakota v. David S. Ferriero, 7:19-cv-02032-LSC (December 16, 2019), available at ; Equal Means Equal v. Ferriero, 1:20-cv-10015 (January 7, 2020),

⁵ Center for American Progress, (January 29, 2020). *The Equal Rights Amendment: What You Need to Know*, <https://www.americanprogress.org/article/equal-rights-amendment-need-know/>

⁶ Bureau of Labor Statistics, BLS Reports (September 2021) – *Highlights of Women’s Earnings in 2020*. www.bls.gov

which comparable earnings data are available, women's earnings were 62 percent of men. Most of the growth in women's earnings relative to men's occurred in the 1980s (when the women's-to-men's ratio went from 64 percent to 70 percent) and in the 1990s (when the ratio went from 72 percent to 77 percent). Since 2004, the women's-to-men's earnings ratio has remained in the 80 to 83 percent range. BLS reported in 2020, median weekly earnings were \$891 for all women age 16 and older. For men age 16 and older, median weekly earnings were \$1,082.

The National Partnership for Women & Families (NPWF)⁷ reported that on a national level, the annual pay for a woman holding a full-time, year-round job is \$50,982. In comparison, for a man holding a full-time, year-round job is \$61,417. The NPWF reports that the State of Michigan ranks 15th relative to having the highest gender wage gap of \$0.22 per dollar. This informs the reference to women in the United States being paid 83 cents for every dollar that is paid to men, a gender pay gap of \$10,435. Experts warn that women and men will not reach pay parity until 2059, without additional changes in policies.⁸

Michigan

Most states have adopted laws to address the gender pay gap to ensure pay equity and eliminate pay differences based on gender. In the State of Michigan, there exists legislation to prohibit discrimination in compensation between men and women, including: Elliott-Larsen Civil Rights Act (MCL 37.2202), the Workforce Opportunity Wage Act (MCL 408.423), and the Unfair Discrimination Restraint of Trade and Trusts Law (MCL 750.556). The Civil Rights Act and Restraint of Trade Law applies to all employers and the Workforce Opportunity Wage act applies to employers with two (2) or more employees⁹.

Elliott-Larsen Civil Rights Act (MCL 37.2202)¹⁰ – prohibits sexual harassment and provides that an employer is not to engage in practices that:

- Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or because of religion, race, color, national origin, age, sex, height, weight, or marital status.
- Limit, segregate, or classify an employee or applicant for employment, or adversely affects the status of an employee based on these demographics.

Workforce Opportunity Wage Act (MCL 408.423)¹¹ – provides that an employer shall not discriminate between employees within an establishment based on sex, by paying wages to employees in the establishment at a rate less than the rate the employer pays wages to employees of the opposite sex for work requiring equal skills under similar working conditions. Exceptions include payments based on a seniority system, merit system, a system that measures earnings by quantity or quality of work, or a differential based on a factor other than sex.

⁷ National Partnership for Women & Families (January 2022), *Fact Sheet: America's Women and the Wage Gap*, <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/americas-women-and-the-wage-gap.pdf>

⁸ Hegewisch, A. & Mariano, H. (2020, September). *Same Gap, Different Year: The Gender Wage Gap, 2019 Earnings Differences by Gender, Race, and Ethnicity*.

⁹ Business & Learning Resources (BLR), a division of Simplify Compliance, LLC. *Michigan Equal Pay Acts: What You Need to Know*, <https://www.blr.com/Compensation/Discrimination/Equal-Pay-Acts-in-Michigan>

¹⁰ Elliott-Larsen Civil Rights Act, Act 453 of 1976, MCL 37.2202. <http://legislature.mi.gov/doc.aspx?mcl-37-2202>

¹¹ Workforce Opportunity Wage Act, Act 138 of 2014, MCL 408.423. <http://legislature.mi.gov/doc.aspx?mcl-408-423>

The Michigan Penal Code - Unfair Discrimination Restraint of Trade and Trusts Law (MCL 750.556)¹²– provides that Michigan employers that employ both males and females and who discriminate in any way in the payment of wages between sexes that are similarly employed, shall be guilty of a misdemeanor. Further, no female shall be assigned any task disproportionate to her strength, nor shall she be employed in any place detrimental to her morals, health, or potential capacity for motherhood.

City of Detroit

On March 8, 2022, the Detroit City Council considered an “Employee Minimum Wage” resolution to amend the 2021-2022 Official Compensation Schedule to provide that all Detroit government employees paid for out of the city’s general fund would earn no less than \$15 per hour starting July 1, 2022.¹³ The change affects approximately 270 City employees in thirty-four (34) positions at the cost of approximately \$1.5 million dollars.

The rationale noted that the federal minimum wage has remained at \$7.25, since 2009. The State of Michigan minimum wage was adjusted to \$9.87, effective January 1, 2022. The Detroit Employee Minimum Wage proposal does not apply to non-general fund departments, such as the Water & Sewerage Department, which is funded through the revenue it collects for its services, or non-city-run agencies. The Detroit Water & Sewer Department (DWSD), which has approximately 550 employees, already has taken steps to guarantee no employees are paid below \$15 per hour.

The raising of the employee minimum wage to \$15 per hour is expected to impact the overall standard of living for impacted employees and narrow the racial and gender pay gaps internally.

Conclusion and Suggested Motion for Council Consideration:

Council Member Durhal requested the drafting of an Ordinance regarding Equal Pay for Equal Work. However, with the existence of current federal and state laws, the City of Detroit is already regulated relative to this matter.

It is recommended that the City Council consider adoption of a resolution that the City of Detroit Human Resources Department, in conjunction with the Civil Rights, Inclusion & Opportunity Department, undertake a study to evaluation compensation within and across city departments, to determine if any additional changes in policy are needed to ensure future pay parity.

Please feel free to contact LPD should additional information be requested.

¹² The Michigan Penal Code – Discrimination between sexes in payment of wages, Act 328 of 1931, MCL 750.556. <http://legislature.mi.gov/doc.aspx?mcl-750-556>

¹³ Detroit City Council resolution to Amend the 2021-2022 Official Compensation Schedule on behalf of the Human Resources Department, Classification & Compensation Division (March 8, 2022 Formal Session Agenda)