

MINNESOTA **E**MPLOYMENT LAW COUNCIL

TO: Representative Her and Members of the Committee on Judiciary, Finance and Civil Law

FROM: Melissa Raphan & Ryan E. Mick, Minnesota Employment Law Council

DATE: February 1, 2021

RE: House File 403

The Minnesota Employment Law Council (“MELC”) supports the principles on which the Preventing Pay Discrimination Act (H.F. 403) is founded and commends the effort to combat the wage gap in Minnesota. Responsible Minnesota employers agree that pay discrimination has no business in Minnesota and support the effort to close the pay gap. We have identified some specific concerns with the bill, as currently drafted, and look forward to working with the author to clarify and refine the bill. Specifically:

- A rebuttable presumption of liability (lines 1.13-1.16) is contrary to accepted legal standards in litigation and contrary to other parts of the bill, including subpart (c). As drafted, the bill would create a rebuttable presumption of liability even if an employee voluntarily initiated disclosure of pay history information, which is contrary to the concept that employees should be able to discuss their pay, at their discretion, without exposing an employer to liability. Further, a rebuttable presumption of liability likely would have the adverse effect of discouraging any discussion of pay and benefits in the context of a negotiation, as employers try to avoid any implication that they were, in fact, inquiring about pay history as part of such discussions.
- In subpart (c), the phrase “without prompting disclos[ure]” (lines 1.23 – 2.2) is likely to result in confusion and dispute over whether a particular discussion or inquiry somehow indirectly “prompted” a pay history disclosure that was purely voluntary by the applicant.
- Also in subpart (c), MELC proposes that if an employee voluntarily initiates disclosure of her pay history, that information may be used in the parties’ negotiations, without limitation and regardless whether an offer was previously presented (lines 2.5 – 2.6).
- Finally, MELC recommends addition of language consistent with other states’ statutes that makes clear that employers are permitted to provide information about compensation and benefits and inquire about an applicant’s expectations or requests concerning compensation and benefits.

Thank you for your consideration of these changes. Please do not hesitate to reach out if you would like to discuss these proposals further.