
Oregon Equal Pay Act of 2017: Most Provisions Take Effect in January 2019

By Lindsay Reynolds

On June 1, 2017, Governor Kate Brown signed into law the Oregon Equal Pay Act of 2017, expanding the current law's protection against wage disparities among employees. Currently, Oregon prohibits discrimination "between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills." The amended law increases the current law's scope to prohibit discrimination against employees on the basis of a "protected class," which is defined as "a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age" in the payment of compensation (wages, salary, bonuses, benefits, fringe benefits, and equity-based compensation) for work of comparable character.

The amended law carves out an exception, which allows employers to have varying compensation levels as long as the disparity is "based on a bona fide factor" that is related to the position in question. Those factors include the following:

- A seniority system
- A merit system

- A system that measures earnings by quality or quantity of production
- Workplace locations
- Travel (if necessary and regular for the employee)
- Education
- Training
- Experience
- Any combination of the factors listed above, but only if that combination accounts for the entire compensation differential

Most of the new provisions take effect on January 1, 2019, which gives employers time to analyze their compensation structures and make any necessary changes. Employers who violate the amended law could be held liable for unpaid wages, compensatory damages, punitive damages, and attorneys' fees. An employer may avoid having to pay compensatory or punitive damages if the employer demonstrates that it completed an equal-pay analysis of its pay practices within the three years before the date the employee filed the action, and if it eliminated the wage differentials for that employee.

In addition, the amended law pro-

hibits employers from seeking salary history information of an applicant or an employee. This means that it is unlawful for employers to ask applicants to disclose what they were paid in any prior employment position. This provision took effect in October 2017. Beginning on January 1, 2019, the Oregon Bureau of Labor and Industries will have the authority to enforce this provision and issue civil fines. Beginning January 1, 2024, employees will have a right of private action against potential employers who have inquired about their salary history.

Employers should review their hiring practices to ensure that job applications and interviewers do not ask about an applicant's salary history. Employers should also perform an equal-pay analysis to assess and correct any wage disparities among employees who perform work of comparable character that are not based on a bona fide factor. Additionally, employers should document employee performance and articulate and document legitimate reasons, listed under the statute, for pay disparities.

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