

Electronic Alert

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Oregon Legislature Passes Equity “Fix” Bill

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This session, the Oregon Legislature passed Senate Bill 123, which provides a number of “fixes” to Oregon’s 2017 Equal Pay Act. Those fixes are not drastic, but include changes to the definition of “system,” compensation for modified work, and the requirements for an employer’s pay equity analysis. We’ve provided alerts on Oregon’s Equal Pay Act last August and November. As a reminder, the law prohibits employers from compensating any employee at a greater rate than the employer compensates other employees of a protected class for work of comparable character unless the entire difference is based on one or more of the law’s bona fide factors. Further, employers cannot ask applicants about their pay history whether on application forms or during interviews.

System

Remember that the bona fide factors include: a seniority system, merit system, system that measures earnings by quantity or quality of production, as well as workplace location, travel, education, training, and experience. The regulations currently have an extremely long definition for “system”—“a devised coherent, consistent, verifiable and reasonable method that was in use at the time of the alleged violation to identify, measure and apply appropriate variables in an orderly, logical and effective manner.” The regulations go on to provide an even more specific definition of what qualifies as a “seniority system,” a “merit system,” and a “system that measures earnings by quantity or quality of production.” Senate Bill 123 clarifies these convoluted definitions by shortening the definition of “system” to mean “a consistent and verifiable method in use at the time that a violation is alleged.”

Different Compensation for Modified Work

The fix bill also clarifies that it is not a violation of Oregon’s Equal Pay Act for an employer to pay a different level of compensation to an employee who is performing modified work: (1) because of a covered workers’ compensation injury; or (2) requested temporarily because of a medical condition and authorized by a licensed medical professional.

Pay Equity Analysis

The pay equity analysis changes in the bill clarify that an employer’s analysis does not have to specifically relate to the protected class asserted by the plaintiff. Rather, the analysis must include a review of practices designed to eliminate unlawful wage differentials between all employees. Further, after completing the analysis, the employer must make reasonable and substantial progress towards eliminating wage differentials for its employees, not just wage differentials for the protected class asserted by the plaintiff. This confirms that employers do not have to identify the protected class status of its employees in order to qualify for the safe harbor associated with conducting a pay equity analysis.

For questions on pay equity compliance or your pay equity analysis, contact Nicole Elgin at nelgin@barran.com or Andrew Schpak at aschpak@barran.com. Barran Liebman's Annual Employment, Labor, Benefits, and Higher Education Law Seminar on October 10th will also cover a variety of employment hot topics, including pay equity. Please click [here](#) for registration details.