

Electronic Alert

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Washington Pay Equity Updates: Employers Are Prohibited from Asking Prior Salary & Must Disclose Wage Information

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Washington's pay equity law has been amended to generally prohibit employers from inquiring about a job applicant's wage or salary history and to impose new disclosure requirements on salary ranges. The amendments to the Equal Pay and Opportunities Act ("EPOA") take effect July 28, 2019.

Inquiries About Prior Salary/Wage History Prohibited

With the amendments, Washington becomes the third state on the west coast to pass legislation prohibiting an employer from seeking a job applicant's "wage or salary history." The prohibition includes requesting salary information from external applicants or current employees who apply for new positions within the organization. Nor are employers allowed to indirectly seek salary and wage history information by asking the applicant's former employer. The amended EPOA also bans employers from requiring an applicant to have previously been paid a certain salary or wage as criteria for the new position.

The ban on employers requesting and using salary history applies to all Washington employers, regardless of size.

The law contains two exceptions. First, an employer may confirm an applicant's prior salary if the applicant has "voluntarily disclosed" it. However, an employer should be cautious in not soliciting or prompting the disclosure. Second, an employer may confirm an applicant's prior salary history after the employer has negotiated with the applicant and made an offer, including compensation

The amended EPOA does not prohibit an employer from asking an applicant their expected salary.

Employers Must Provide Applicants with Wage Information Upon Request

A second component of the law requires employers with fifteen or more employees to provide a job applicant with certain salary information, if requested by the applicant. The mandate to provide salary information is only triggered after the employer has made an offer to the applicant. Specifically, if requested by the applicant, the employer must provide "the minimum wage or salary for the position for which the applicant is applying." For current employees applying for a new position within the organization, when requested, employers must provide the "wage scale or salary range" for the new position. Where the employer does not have a wage scale or salary range for the position, it must provide "the minimum wage or salary expectation set by the employer prior to posting the position."

Private Right of Action

Employees alleging a violation of these provisions may either file a complaint with Washington Department of Labor and Industries or bring a civil action. A civil claim has significant risks for employers: if an employee prevails on their claim of an EPOA violation, they are entitled to both

actual damages and statutory damages (equal to actual damages or \$5,000, whichever is greater), as well as costs and attorneys' fees and potentially injunctive relief.

What Employers Need to Do:

- Review job applications and other hiring documents to remove any request for an applicant's salary history;
- Review and remove any criteria establishing a prior salary as a requirement for the position;
- Train managers and others involved in the hiring process to not ask about prior wages and salaries;
- Ensure that salary information, including confirmation of prior wage, is requested only after an offer of employment (with salary) is made;
- Review and update salary ranges and pay scales. For employers without salary ranges, set minimum salary expectations prior to posting a new position. Be prepared to turn over wage information to an applicant or current employee to whom you have made an offer of employment if they request it.

For questions about Washington's pay equity law amendments or for any other pay equity inquiries, contact Sarah Hale at (503) 276-2111 or shale@barran.com.