

The Oregon Equal Pay Law is Here, So Where Do I Begin?

Best Practices for Effective Use of Job Descriptions

By DONOVAN BONNER

Enforcement of Oregon's Equal Pay Act began, as of January 1, 2019. Generally speaking, Oregon's Equal Pay Law prohibits employees of a protected class who perform work of comparable character from being compensated unequally, unless the entirety of the compensation differential is based on a bona fide factor related to the position.



Work of comparable character is defined as work that requires "substantially similar knowledge, skill, effort, responsibility and working conditions," regardless of job title or job description. In essence, the law distinguishes among employees based on the work they actually perform, and not merely on what their job titles or job descriptions say.

As a result, an employer cannot rely solely on job descriptions to comply with the law. However, job descriptions can be an important tool in assessing whether pay practices are compliant. Here are five steps which can be used to analyze job descriptions and make progress towards compliance:

1. Determine Whether Actual Duties Match Job Descriptions

Some jobs responsibilities are ever-evolving and others experience no drastic changes. In order to make sure job descriptions accurately depict the actual jobs being performed, employers should make efforts to update job descriptions, even if minimally. Job descriptions should be reviewed to ensure they accurately reflect employees' responsibilities. Employers can achieve this goal in various ways, including, but not limited to, 1) conducting employee surveys, 2) using annual reviews, and 3) requiring managers to update the documents. As an employer is using this data to update job descriptions, it can also be used in work of comparable character analysis.

2. Use Descriptive Titles

It is important to make job titles descriptive, but not excessively so. Employers should accurately describe positions and refrain from using generic titles to cover multiple positions that actually entail different duties. An effective job title can give an employer a means to initiate comparisons. For example, if there are two employees with the job title of "Marketing Manager," an employer should group these individuals to compare job requirements and the specific tasks and responsibilities involved. Therefore, when assessing whether individuals performing comparable work are equitably paid, the review must go far beyond those with the same job title.

3. Sharpen Categories of Essential Functions

The essential functions section of a job description is arguably the most crucial tool in distinguishing employees' job responsibilities. Essential functions

are the core job duties that an employee must be able to perform in order to fulfill the requirements of the position. Employers must carefully examine each job to determine which functions or tasks are essential to performance.

While the law does not require employers to use essential functions categories to determine compliance, an employer can use this category to determine if an employee performs the key job duties of the position at hand. Here are a few characteristics that can be used when drafting an essentials functions list: job tasks, methods used to complete the tasks, relationships to other jobs, and job qualifications.

4. Create "Comparable Character" Categories

An employer should review the different types of work employees are performing and consider grouping them into categories based on whether they are doing work of "comparable character." For employees who are doing similar work, the employer should dive deeper to evaluate appropriate differences in positions, identify disparities in relative pay, and, if found, ascertain whether there is a "bona fide factor" (or a combination of them) justifying the pay differential.

5. Identify "Bona Fide Factors"

Generally speaking, Oregon's Equal Pay Law prohibits employees of a protected class who perform work of comparable character from being compensated unequally, unless the entirety of the compensation differential is based on a bona fide factor related to the position.

The use of key terms and bona fide factors in job descriptions can put an employer on the path to creating a clearly documented system to evaluate pay discrepancies. The law provides a non-exhaustive list of bona fide factors that employers can implement directly into job descriptions. For example, within this list, workplace locations, travel, education, training, and experience, can all be identified in a job description.

Direct implementation of factors in a job description will help employers more easily identify similarities and differences between jobs. An employer should be able to identify multiple factors that distinguish between employees' work and explain why such factors adequately differentiate the roles. No single factor is determinative under "work of comparable character."

Ultimately, in the definition of "comparable character," the added language "regardless of job description or job title" emphasizes that a job title or job description alone cannot establish that any two employees are (or are not) "substantially similar." Therefore, job descriptions should be used as a tool to assist in identifying discrepancies or similarities between jobs. Pay practices will then need to use this information to comply with the Oregon Equal Pay Act, which focuses on a job's actual duties and responsibilities in practice, and not just on paper.

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