

# Oregon's Pay Equity Law

## Proactive Steps for Employers

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**O**regon passed its revolutionary Pay Equity Law in 2017 and enforcement begins this January 1, 2019. Oregon's Pay Equity Law is unique from others recently enacted throughout the country because it prohibits discrimination in compensation not only based on gender, but also on a number of other protected classes. It also defines compensation broadly to include not only wages, but also salaries, benefits, bonuses, fringe benefits and even equity-based compensation.



Specifically, the law prohibits employers from discriminating between employees based on their protected class status in the compensation for work of comparable character. The law also says that employers cannot compensate any employee at a greater rate than the employer compensates other employees in a protected class for work of a comparable character. This prohibition is expansive because it does not require any intentional discrimination from the employer in order to find a violation. Further, employers cannot ask applicants about their pay history whether on application forms or during interviews.

Many employers are realizing that compliance with this law requires an expansive review and update to current practices, policies and procedures. During this process, there are a few things employers can do to be proactive before that January 1 enforcement date.

### 1. Update Your Job Descriptions.

If you needed yet another reason to update your job descriptions, this law provides one more. The law defines "work of comparable character" as work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the

performance of work, regardless of job description or job title. Proactive employers reviewing their current pay practices first need to be able to compare employees that are performing similar work, which can be more difficult to do in larger companies if job descriptions are outdated. Some employers are even interviewing current employees on their regular duties in order to improve job descriptions. Making sure a job description accurately reflects the work performed in the role makes it easier for employers to compare which employees are performing comparable work and identify any pay discrepancies.

### 2. Have Verifiable Systems to Explain Pay Discrepancies.

Another key part of the law explains that employers are allowed to compensate employees performing work of a comparable character differently if all of the difference is based on a bona fide factor related to the position and is based on: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quality or quantity of production, including piece-rate work; (4) workplace locations; (5) travel, if travel is regular and necessary for the employee; (6) education; (7) training; (8) experience; or (8) any combination of these factors, if the combination of factors accounts for the entire compensation differential.

What this means for employers, is that having good systems in place will help explain legitimate reasons for pay differentials between employees in the same job classifications. However, just saying that the company has a system without any proof of one is unlikely to be a winning defense. Proactive employers will want to review and make any necessary improvements to current seniority, merit, or other systems in place to make sure they account for current compensation distinctions between employees who perform work of comparable character. These systems should also be written,

known and adhered to by those who make employee compensation decisions. If your workplace has not traditionally had any specific system, now is a great time to put one in place.

### 3. Perform an Analysis.

In the event an employee sues their employer for violations of pay equity, the law does provide a partial safe harbor if the employer has performed an equal pay analysis within the past three years. Specifically, the law allows an employer to move for no award of compensatory and punitive damages to the employee. This defense is attractive to many because it should significantly limit the employer's economic exposure in the event of a lawsuit.

However, to qualify for this defense, the employer has to show that the equal pay analysis that it performed was (1) reasonable in detail and scope in light of the size of the employer; (2) related to the protected class asserted by the plaintiff in the action; and (3) eliminated the wage differentials for the plaintiff and has made reasonable and substantial progress toward eliminating wage differentials for the protected class asserted by the plaintiff. Determining the extent of analysis a company must undertake to qualify for this defense requires considering a multitude of factors, such as the nature of the workforce, centralization of compensation decisions and the value of various benefits available to employees.

While it may seem like a daunting to do list, these three steps will help employers looking to get ahead on pay equity compliance.

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