

Publications

Labor and Employment Alert: Oregon Adopts an Expansive Equal Pay Act That Prohibits Salary Inquiries

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Recently, Oregon enacted the Oregon Equal Pay Act of 2017. The act prohibits employers from inquiring into an applicant's or employee's salary history and expands the reach of the equal pay requirements. Notably, the act received bipartisan support in both the Oregon House and Senate, and was passed unanimously.

Oregon law already prohibited pay discrimination on the basis of sex. The act expands this pay prohibition to include race, color, religion, sexual orientation, national origin, marital status, disability, age and veteran status. Employers cannot "in any manner discriminate between employees on the basis of a protected class in the payment of wages or other compensation for work of comparable character." This includes paying wages, salaries, bonuses, benefits, fringe benefits or equity-based compensation to any employee at a rate greater than that at which the employer pays to employees of a protected class for work of comparable character. "Work of a comparable character" means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of the work, regardless of job description or job title.

An employer is permitted to pay employees differently for work of a comparable character if the difference in compensation is the result of a seniority system; a merit system; a system that measures earnings based on quality or quantity (like piece-rate work); workplace locations; travel; education; training; experience; or a combination of these factors.

In addition to the comparable pay requirement, employers may not (1) screen job applicants based on current or past income; (2) determine compensation for a position based on applicant's current or past compensation; (3) reduce the compensation of any employee to comply with the act; or (4) seek the salary history of an applicant or employee from the applicant or employee or his or her current or former employer. An employer is permitted to request an applicant for written authorization to confirm prior compensation after the employer makes him or her an offer of employment that includes an amount of

compensation.

Aggrieved employees may seek two years of back pay and attorneys' fees by filing a complaint with the Oregon Bureau of Labor and Industries or by filing a lawsuit within one year; each payment based on an underlying discriminatory practice extends this period. Additionally, if the employee proves fraud, malice, willful and wanton misconduct, or a previously adjudicated violation by the employer, the employee can recover compensatory and punitive damages. However, an employer can file a motion to disallow an award of compensatory and punitive damages.

To avoid liability for compensatory and punitive damages, the employer must prove that it completed, within three years before the date the employee filed the action, an equal-pay analysis of its pay practices in good faith that was: reasonable in detail and in scope in light of the employer's size; related to the protected class asserted by the employee; and eliminated the wage differentials for the employee and has made reasonable and substantial progress toward eliminating wage differentials for the protected class asserted by the employee. If the court grants the motion, the court may only award two years' back pay reasonable attorney fees.

Most of the act's provisions described above relating to screening and compensation discrimination become effective on January 1, 2019. However, the cause of action and penalties associated with inquiring into applicants' and employees' salary history is not effective until January 1, 2024. This provides employers with time to assess its pay practices and any differences in compensation within the ten protected classes. Contact your Vorys lawyer if you have questions about the comparable pay requirements or for assistance in conducting an equal pay analysis.