

Equal Pay, the Oregon Way

Legal Alert
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Even as Oregon's minimum wage jumps by \$1.50 in the Portland metro area (fifty cents elsewhere in Oregon), the 2017 Legislature has passed two more worker-friendly bills dealing with equal pay and [predictable work schedules](#).

House Bill 2005, called the **Equal Pay Act**, puts new teeth into anti-discrimination provisions in an effort to shrink persistent wage gaps based on protected characteristics. The law takes effect January 1, 2019, with a few exceptions.

The Equal Pay Act builds on existing employment laws: one that prohibits pay discrimination based on gender, and others that prohibit employment discrimination based on membership in protected classes. The act explicitly extends equal pay provisions to all recognized protected classes.

Here are some details:

“Comparable” work. Equal pay for employees with the same job description or job title is just a starting point. The law also mandates equal pay for all “work of comparable character” – that is, “requiring substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work.”

Protected classes, and bona fide distinctions. Employers may not discriminate in pay based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, age, and veteran status. Employers may differentiate pay only based on bona fide factors related to the job: merit, seniority, quantity or quality of production, workplace locations, travel, education, training, or experience.

Leveling up. Employers must raise the compensation of lower-paid employees within comparable jobs to close any wage gap – not reduce the wages of a better-paid worker.

At hiring. Employers may not screen applicants or determine compensation based on the applicants' salary history – in fact they can't even seek that history until they have offered the job, including revealing the proposed compensation. (There is an exception for internal hires and transfers.) Unlike the rest of the law, that provision takes effect sooner, 91 days after the legislative session ends (so, early this fall), but there is no ability for the employee to sue (no private right of action) for alleged violations until 2024.

Remedies. The act expands remedies for pay equity violations and retaliation for wage inquiries and wage claims under Oregon existing law. Punitive damages are available if the employer is a repeat offender, or if it is proved by "clear and convincing evidence" that the employer "engaged in fraud, acted with malice or acted with willful and wanton misconduct." Conversely, an employer may avoid such by showing it completed an equal-pay analysis of a reasonable scope (considering the size of the employer) that covered the plaintiff's protected class within the three years before the claim that was related. The employer must also show it acted on that analysis – that it eliminated any identified pay gap for the plaintiff, and that it has made reasonably substantial progress toward eliminating any wage gap identified under the analysis for the entire protected class.

Bringing a Claim. Employees have one year to bring a claim – not from the first paycheck they cash, but after *any* paycheck reflecting discriminatory pay practices (as under the federal Lily Ledbetter Act). If Oregon's Bureau of Labor and Industries finds in favor of the employee, the employer must pay up to two years of back pay.

For any questions, feel free to reach out to the attorneys in [GSB's Labor & Employment Practice Group](#).