

Electronic Alert

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Employers Take Note: Part of New Pay Equity Act to Take Effect Today **By Anthony Kuchulis**

Today, the Oregon Pay Equity Act's prohibition on screening job applicants or employees based on past compensation takes effect. Under the law, it is illegal to both screen job applicants based on current or past compensation, as well as to determine compensation for a position based on current or past compensation of a prospective employee. The law does not forbid an employer from considering employee compensation during a transfer, move, or hire of the employee to a new position within that same employer.

This new restriction is intended to address the historic pay gap experienced by certain protected classes by prohibiting employers from using that information to perpetually depress wages for those workers. This provision of the law will initially be enforced by the Oregon Bureau of Labor and Industries (BOLI), although workers will have a private right of action starting January 1, 2024.

If they have not done so already, employers should take steps now to ensure that they will not be in violation of the law. Those steps should include reviewing all job applications and postings to ensure they do not ask for past pay information and counseling all interviewers and recruiters not to ask about pay history when screening new applicants.

While the law prevents employers from seeking pay history from job applicants, it does not prevent them from asking prospective employees their "minimum wage or salary requirement" or their "wage or salary expectations" for the position. Such information is often vital in determining whether the candidate is within the designated pay range of any given position.

The broader pay equity requirements of the new law, which will take effect on January 1, 2019, place a significantly higher burden on employers, and increase exposure. Employers are encouraged to start now on full compliance with the law and to begin working on a general pay equity analysis within the workplace. Furthermore, the new rules will place a higher burden on employers to have records and systems that objectively explain any pay discrepancies between employees who belong to one or more protected classes.

Based on the number of protected classes included in the new law, every employee will belong to multiple protected classes, meaning that all employee pay must be scrutinized. Intentional discrimination is not required under the law and any failure to properly document pay policies could result in a lawsuit. In addition, there is a limited affirmative defense under the law for employers who have conducted a reasonable pay equity analysis within the preceding three years.

Barran Liebman attorneys are available to assist and counsel on how to perform a pay equity analysis and the types of forms and processes that should be reviewed and considered. Please contact us any time for a consultation. For specific questions about how the Pay Equity Act affects your workplace, contact Anthony Kuchulis at (503) 276-2199 or akuchulis@barran.com.