

Equal Pay Act of 2017

Oregon House Bill 2005



Important Dates

- October 6, 2017: New law became effective
- January 1, 2019: Bureau of Labor & Industries (BOLI) enforcement begins

Key Points

It is unlawful employment practice to:

- Screen job applications based on current or past compensation, seek the salary history of an applicant, or to obtain it from a former employer
- Determine compensation for a position based on current or past compensation of a prospective employee
 - does not apply to internal candidates if moving or transferring employee to a new position with the same employer
- Discriminate on the basis of **protected class** in payment of **wages or other compensation** for work of **comparable character**
- Pay wages or other compensation for an employee greater than another employee in a protected class for work of comparable character. **Discriminatory intent is irrelevant**
- Reduce the compensation level of an employee to comply with the law



Protected Classes

- Race
- Color
- Religion
- Sex (gender)
- Sexual Orientation (actual or perceived)
- National Origin
- Marital Status
- Veteran Status (per ORS 408.225)
- Disability
- Age



Defining Work of Comparable Character

Work that requires substantially similar:

- **Knowledge**
 - Certifications, licensure, education, experience, training
- **Skill**
 - Ability, agility, creativity, efficiency, precision, coordination
- **Effort**
 - Physical or mental exertion, complexity of jobs performed
- **Responsibility**
 - Accountability, discretion, autonomy, impact of decisions
- **Working Conditions**
 - Hours, time of day, physical surroundings, potential hazards
- No single factor is determinative
- Regardless of job description or job title



Determining Work of Comparable Character

- Based on actual work performed, not job titles
- The more employees identified in each “group,” the more pay that will have to be equalized
- If employees are not performing work of comparable character, analysis ends here

Analyzing Compensation

- Compensation includes more than just salary:
 - Benefits
 - Fringe Benefits
 - Wages
 - Salary
 - Bonuses
 - Equity-based compensation
- If all employees are compensated equally, your analysis ends here.

Applying Bona Fide Factors

- Compensation differentials are permissible when the entire difference is based on one of the statutorily provided “bona fide factors”
- Differences not based on a bona fide factor are presumed to be unlawful (when a protected class difference is alleged)



Bona Fide Factors for different compensation levels

- **Seniority system**
 - Step increases on a salary schedule or based on length of service
- **Merit system**
 - Performance measured by job-related categorical or numerical criteria
- **Quantity, Quality, or Piece-Rate system**
- **Workplace location**
 - Cost of living, desirability, access, minimum wage zones
- **Travel, if necessary and regular**
- **Education**
 - Substantive knowledge through coursework, certification, degrees
- **Training**
 - Received on-the-job or through a formal program
- **Experience relevant to the particular job**
- Any combination of these factors if it accounts **for the entire differential**



Factors that are NOT permitted

- Ad hoc decisions
- After-the-fact justifications
- Undocumented assessments of supervisors
- Responding to competing job offers
- A tight labor market and the need for higher starting salaries
- Intangibles, such as emotional intelligence, teamwork, leadership or potential, unless measured on an objective basis
- Membership in a bargaining unit

Correcting Unexplained Differences

- If pay differences are not justified by a bona fide factor, employees who are not compensated highly enough must be brought up to the appropriate salary level
 - Reducing the compensation of higher paid employees is not a lawful means of compliance with pay equity
 - Freezing or holding higher salaries constant while other employees catch up is not considered a reduction



To-Do List

- Instruct search chairs/committees or hiring managers not to seek pay or pay history from candidates
- Determine how the organization will define and apply characteristics to identify groups of employees performing work of comparable character
- Review/update position descriptions to mirror the analysis of work of comparable character.
- Check for compliance issues now



Adapting current HR Processes, Procedures, and Practices

- Effective with the **February** 2019 cycle, initial pay offers, retention increases and salary increase proposals will be reviewed, and consultation provided, in alignment with OEPA.
- HR already reviews compensation actions for equity against federal law; new OEPA requirements will be added.
 - Revised salary request forms will incorporate need for justification of increase in compliance with allowable OEPA factors
 - Assessment of equity across jobs of comparable character will be performed by HRBPs in conjunction with Comp/Class.
 - Active consultation with department heads and Deans as necessary to identify issues/opportunities/approaches
 - HRBPs will be your point of contact for all compensation matters within your college; HRBPs will coordinate with Comp/Class
 - HRBPs are meeting weekly to coordinate practices across colleges/campus
 - Susan Capalbo will continue to approve faculty increases over 10%.



Actions for FY19 - 2020

- Establish Systems and documentation for Performance Evaluation tied to compensation
 - *Academic Faculty*
 - Explore potential approaches to establishing a compliant “system of merit” for use in FY 2019-2020 annual pay increases.
 - This effort would intersect with UAOSU bargaining and likely benefit from external consultation.
 - *Professional faculty.*
 - Explore potential approaches to establishing a compliant “system of merit” for use in FY 2019-2020 annual pay increases.
 - *Classified staff*
 - No immediate change to process, this group already operating under a highly structured seniority/step system of compensation in alignment with the law.
 - Compensation differences between classified staff is generally a factor of tenure/step.



Resources

- Oregon BOLI Technical Assistance:
<https://www.oregon.gov/boli/TA/Pages/FactSheetsFAQs/PayEquity.aspx>
- Administrative Rules:
https://www.oregon.gov/boli/WHD/docs/ProposedRules/PayEquityPermanentRuleBLI_22-2018.pdf
- OSU Office of Human Resources:
Tracey Yee, Classification and Compensation Manager
- Office of General Counsel:
Jeremy Healey, Associate General Counsel