



## Oregon Equal Pay Act of 2017 (HB2005) Overview of Law for Managers

### IMPORTANT DATES

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

### KEY POINTS

Under Oregon Equal Pay Act, it is **unlawful employment practice** to

- **screen job applications based on current or past compensation** and/or seek the salary history of an applicant or 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 who are current OSU employees)
- **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
- **reduce the compensation level of an employee** to comply with the law

### BREAKING IT DOWN - THE LAW ASKS US TO

1. **Assess work** of comparable character
2. **Analyze compensation** of employees within jobs of comparable character
3. **Apply bona fide factors** to fully explain differences in compensation
4. **Correct** unexplained compensation differences to establish pay equity

### DETERMINING WORK OF COMPARABLE CHARACTER

**Work of Comparable Character** is work that requires substantially similar knowledge, skill, effort, responsibility and working conditions – with no single factor being determinative – *regardless of job title*

### PERMITTED CIRCUMSTANCES FOR PAYING DIFFERENT COMPENSATION LEVELS

The **entire differential** in pay for work of comparable character must be accounted for by one or more of the following **bona fide factors related to the position**.

- A seniority system
- A merit system
- A system that measures earnings by quantity or quality of production, including piece-rate work
- Workplace locations
- Travel, if travel is necessary and regular for the employee
- Education
- Training
- Experience

## STEPS TO OPERATING IN COMPLIANCE WITH THE LAW

When considering a compensation action – whether a new hire offer, a retention offer, or a pay adjustment, **work with your HR Business Partner** to

1. **Update position description** to provide the best basis for HR to evaluate work of comparable character with other positions on campus
2. **HR will establish comparator groups** for assessing the proposed compensation action. In some cases, no comparator group will exist, in which case normal process will apply. In other cases, comparator groups will include employees either inside or outside of your unit or college and the following steps will apply.
3. **Review any pay disparities based on the bona fide factors** among those employees in the comparator group.
4. **If pay differences are justified** by bona fide factors, **document bona fide factors** within the processes and forms established by human resources.
5. **If pay differences are not fully justified** by bona fide factors, work with HR on available strategies to comply with the law. Strategies include adjusting the amount of the proposed pay action or increasing the pay of employees to achieve required equity.
6. **Do NOT reduce** the compensation of higher paid employees to achieve pay equity. Freezing or holding higher salaries constant while other employees catch up is not considered a reduction.

## DEFINITIONS

**Compensation** includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation

**Protected Class** includes race, color, religion, sex (gender), sexual orientation (actual or perceived), national origin, marital status, veteran status, disability, age

**Work of Comparable Character** is work that requires substantially similar knowledge, skill, effort, responsibility and working conditions – with no single factor being determinative – *regardless of job title*

**A Seniority System** recognizes and compensates employees based on length of service with the employer

**A Merit System** 1) provides for variations in pay based upon employee performance as measured through job-related criteria such as a written performance evaluation plan or policy that measures employee performance using a numerical set or other established rating scale, and 2) considers employees' ratings in determining employee rates of pay

**Workplace location** considerations may include cost of living, desirability of worksite location, access to worksite, minimum wage zones, or wage and hour zones – notwithstanding any other applicable federal, state, or local laws

**Regular and necessary travel** if required by the position

**Education** considerations may include substantive knowledge acquired through relevant coursework, as well as any completed certificate or degree program.

**Training** considerations may include on-the-job training acquired in current or past positions, as well as training acquired through a formal training program

**Experience** considerations may include any relevant experience that may be applied to the particular job

## RESOURCES

**Oregon Bureau of Labor and Industry (BOLI)** <https://www.oregon.gov/boli/TA/Pages/FactSheetsFAQs/PayEquity.aspx>

**Permanent Administrative Order**

[https://www.oregon.gov/boli/WHD/docs/ProposedRules/PayEquityPermanentRuleBLI\\_22-2018.pdf](https://www.oregon.gov/boli/WHD/docs/ProposedRules/PayEquityPermanentRuleBLI_22-2018.pdf)

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