

Washington State Legislature Sends Comprehensive Pay Equity Bill to Governor

Wednesday, March 14, 2018

The Washington Legislature has sent Governor Jay Inslee [a proposed Act](#) that would significantly broaden the state's Equal Pay and Opportunity Act. The Governor is expected to approve it.

Pay Equity and Gender

Following Title VII principles, the Act defines "similarly employed" as jobs requiring "similar skill, effort, and responsibility... performed under similar working conditions." Pay differences may be based on other job-related, *bona fide* factors, such as "education, training or experience; a seniority system; a merit system ... [or] regional differences in compensation levels." An employer must explain the *entire pay differential*.

The Act replaced the term "sex" with "gender." Accordingly, LGBTQ employees also appear to be protected from pay discrimination under the Act.

Salary History

Salary history is *not a defense* to a claim of inequitable pay. While the Act does not expressly prohibit salary history inquiries, the value of such inquiries seems greatly diminished under the Act. Setting pay, even in part, according to an applicant's salary history would leave an employer vulnerable to claims.

Inequality in Advancement Opportunities

Employers may not "limit or deprive" an employee of otherwise available advancement opportunities based on gender. An isolated incident is insufficient support for a claim. The employer must be found to have committed a pattern of violations as to the employee or committed a violation through application of a formal or informal employer policy or practice."

Pay Transparency and Retaliation

Employers may not:

- Require employees to enter any non-disclosure or waiver agreement, preventing them from disclosing their pay; or
- Retaliate against an employee who asks about, discloses, or discusses pay; asks the employer to explain her pay or lack of advancement opportunities, or aids or encourages another employee to pursue her rights under the Act.

The Act does *not apply to applicants* who inquire about pay during the application process or ask current employees about their pay.

Other Provisions

Employees may bring direct lawsuits against their employers. Suits must be brought within 3 years of an alleged



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violation. A violation occurs when a discriminatory decision is made, when an employee becomes subject to the decision, or when the employee is affected by the decision. Such violations occur “each time wages, benefits or other compensation is paid” as a result of a discriminatory decision or practice. Based on an employee complaint, the Department of Labor and Industries must investigate the complaint.

Whether the claim is brought directly by an individual employee or by the Department, an employer may be liable for actual or statutory damages up to the greater of actual damages or \$5,000, plus 1% interest per month on all compensation owed, costs, and reasonable attorneys’ fees. Actual damages may date back to 4 years prior to the last violation prior to the filing of the lawsuit. The Act also calls for civil penalties of up to \$500 for the first violation and the greater of \$1,000 or 10% of actual damages for each subsequent violation.

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