Oregon Pay Equity Law – Final Rules. Now What?

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*Our summary of the final rules implementing Oregon's new Pay Equity Law is not meant to serve as ,or replace, legal counsel review and recommendation for personal company implementation of the law.

Pay Equity Law 101

- The new law applies to EVERYONE
  - Private Employers
  - Public Employers
  - Regardless of number of employees – 1 or more
  - Including non-profits and employees covered by a CBA

- Three Major Components of the Law:
  1. Prohibition on asking for prior salary history
     - Effective Oct. 6, 2017 (Private Right of Action Effective January 1, 2024)
  2. Prohibition on considering/screening new hires based on prior salary history
     - Effective January 1, 2019 - Enforcement January 1, 2019
  3. Prohibition on paying employees for work of comparable character at different levels based on discriminatory pay practices
     - Effective January1, 2019 - Enforcement January 1, 2019

Summary provided as a courtesy to clients of Dalton Advocacy, Inc.

Salary History of Prospective/Current Employees

- ORS 652.220 makes it an unlawful employment practice to:
  - Seek prior salary history of employees or prospective employees OAR 839-008-0005(1)
  - Screen job applicants based on current or past compensation
    - "to screen job applicants based on current or past compensation" includes using information, however obtained, about a job applicant's current or past compensation to determine a job applicant's suitability or eligibility for employment." OAR 839-008-0005(2)
  - Determine compensation based on current or past compensation of a new employee

- Existing Employees
  - The law allows you to consider the compensation of a current employee when promoting or moving to a new position, but you can't screen for that promotion based on current salary.

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Key Terms

It is an unlawful employment practice under ORS chapter 659A for an employer to:

- In any manner discriminate between employees on the basis of a protected class in the payment of wages or other compensation for work of comparable character
  - Compensation includes: wages, salary, bonuses, benefits, fringe benefits and equity-based compensation. (b) Compensation does not include tips or reimbursement for any actual costs incurred including, but not limited to, relocation reimbursements, mileage, and out-of-pocket expenses. 839-008-0000(3)(a)
  - Benefits includes everything from pension, retirement, insurance, unemployment benefits to life insurance, sick leave, vacation or holiday pay. 839-008-0000(1)
    - Same benefits "offered" not necessarily accepted. See OAR 839-008-0020
  - Bonus includes: attendance, retention, performance and productivity bonuses. 839-008-0000(2)

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Key Terms

Employee Means: 839-008-0000(4)

- All employees working in Oregon
- Does not include independent contractors

Protected class means:

- A group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. 839-008-0000(9)
  - Sexual orientation: means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth. 839-008-0000(12)
  - See veteran definition at ORS 408.225: https://www.oregonlaws.org/ors/408.225

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What does it mean?

- The law doesn't require equal pay – it prohibits discriminatory pay practices linked to the 10 protected classes

- What could be deemed discriminatory pay practices?
  - Different compensation levels for "work of comparable work" that is not based on a "bona fide factor"

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What is Allowed Under the Law?

- The law states: “An employer may pay employees for work of comparable character at different compensation levels if all of the difference in compensation levels is based on a bona fide factor that is related to the position in question and is based on one of 8 factors that are further defined in the rules. ORS 652.220(2)
  - “Work of comparable character” means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title. 839-008-0000(17)
    - Working conditions includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee. OAR 839-008-0000(16)

Criteria for Evaluating Work of Comparable Factors

- "Work of comparable character" includes substantially similar knowledge, skill, effort, responsibility and working conditions. All of these terms are further defined in OAR 839-008-0010:
  - Knowledge
    - May include, but not limited to: Certifications, Licenses, Certificates; Education; Experience; or Training.
  - Skill
    - May include, but not limited to: Ability; Agility; Coordination; Creativity; Efficiency; Experience or Precision
  - Effort
    - May include, but not limited to: Amount of physical or mental exertion needed; Amount of sustained activity; Complexity of job tasks performed.

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