
SB on HR

75 Years After Passage Legislature Strengthens Equal Pay Law

Income disparity continues to be a central issue for Washington State legislators. Despite ongoing efforts to address the gender pay gap in our state, the legislature found that women working in Washington full-time are still earning eighty cents for every dollar earned by a man working the same job.

In March of this year, the Washington legislature doubled down on these efforts to address income disparity, and passed HB 1506, an amendment that promises to supplement and reinforce Washington's existing Equal Pay Act. This is Washington's first update to its originally enacted 1943 Equal Pay Act, which forbids employers from paying women less than similarly employed men because of their sex. The new amendments will make it easier for employees to identify pay discrepancies in the workplace and bring wage discrimination claims, clarifies the available affirmative defenses for employers, and provides greater enforcement mechanisms for the state and for employees. Here are a few of the bill's key features:

- A new definition of "similarly employed" employees. Under the new law, employees are "similarly employed" for purposes of comparing compensation if the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative.
- Clarifies which "bona fide job-related" factors justify a pay differential between similarly employed workers. Under the current law, employers who pay a female employee less than a similarly employed male worker are presumed to have engaged in a discriminatory pay practice. Employers can rebut that presumption by demonstrating a legitimate, non-discriminatory reason for the pay differential.

The new law clarifies that a pay differential between two similarly employed employees is not unlawfully discriminatory if it is based in good faith on a "bona fide job-related" factor or factors that: (1) are consistent with business necessity; (2) are not based on or derived from a gender-based differential; and (3) account for the entire differential. More than one factor may account for the differential.

The recognized "bona fide factors" include, but are not limited to:

- Education, training, or experience;
 - A seniority system;
 - A merit system;
 - A system that measures earnings by quantity or quality of production; or
 - A regional difference in compensation levels.
- Previous wage or salary history is not a defense to differential pay. An employee's previous wage or salary history is not a defense or a bona fide reason for a pay differential.
 - No discrimination on career advancement opportunities. The amendments also prohibit employers from limiting or depriving an employee of career advancement opportunities based on gender, including by failing to announce or provide access to career advancement opportunities, or failing to provide training that is under the employer's control. The employer's defenses are the same as for Equal Pay defenses except that the defenses based on regional compensation differences or a minimum wage ordinance do not apply.
 - No prohibition on wage discussions. An employer may not restrict employees from discussing their wages in the workplace. The amendments further prohibit employers from retaliating against employees for discussing their wages. (However, an employer may prohibit an employee who has access to the compensation of others from disclosing others' wages, with some exceptions.)
 - Stronger enforcement mechanisms. The new law provides for several more robust enforcement mechanisms, including adding an administrative remedy process through the Department of Labor and Industries, which would be available to employees who may opt not to bring a civil claim. Violations of the EPA will also be classified as misdemeanors and expose employers to additional civil penalties.

The bill is set to take effect on **June 7, 2018**. With this effective date just days away, we encourage employers to review their existing policies and to remove any restrictions on employees' ability to discuss wages in the workplace. We also encourage employers to take a finer comb through their current payroll, and specifically look for pay discrepancies among "similarly employed" workers. No one wants to be the first test case in the enforcement of these new rules!

For questions regarding this article, or any questions regarding HR or employment issues, contact Rochelle Nelson at rnelson@skellengerbender.com or 206-623-6501.

