

NEW LAWS FOR OREGON EMPLOYERS TO OBSERVE FROM THE 2017 LEGISLATIVE SESSION

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U.S. Labor, Employment & Workplace Safety Alert

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HB 2005: A NEW EXPANDED FOCUS ON EQUAL PAY

Now signed into law, *House Bill 2005* (the "**Equal Pay Act**") expands and addresses equal pay discrepancies among women, minorities, and other protected class employees.

The Equal Pay Act makes it an unlawful employment practice to:

1. discriminate between employees on the basis of a protected class in the payment of wages or other compensation for work of comparable character;
2. pay wages or other compensation to any employee at a rate greater than that at which the employer pays to employees of a protected class for work of a comparable character;
3. screen job applicants based on current or past compensations; or
4. determine compensation for a position based on current or past compensation of a prospective employee.

The Equal Pay Act lists "protected class" to mean race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. The Equal Pay Act further defines "work of a comparable character" to mean work that requires substantially similar knowledge, skill, effort, responsibility, and working conditions in the performance of work, regardless of job description or job title.

The Equal Pay Act does allow employers, however, to pay employees at differing compensation levels where the difference in compensation is based on a bona fide factor, such as: a seniority system, a merit system, quantity or quality of production, workplace locations, education, training, experience, or a combination of those factors.

Employers will also be required to post a notice of the Equal Pay Act's requirements, and the Bureau of Labor and Industries has been asked to make available to employers a template meeting the requirements of the notice.

While passage of the Equal Pay Act received a majority of legislative votes, it will undoubtedly create some implementation and operational challenges, particularly as employers will no longer be able to ask applicants or current employees about their salary history until after the employer makes an offer of employment to the prospective employee that includes an amount of compensation.

The legislature set out an implementation timeline that employers will need to be aware of and adhere to in order to address compliance concerns. For instance, as of September 2017 (91 days following the day the Legislative

Assembly adjourns), employers will no longer be allowed to seek salary history from applicants or current employees. On January 1, 2019, most of the Equal Pay Act's provisions expanding protections and amending causes of action take effect, including requiring posted notice and making it unlawful to pay different wages, screen job applicants, or determine compensation based on an applicant's current or past compensation. On January 1, 2024, employees will have a right of action against employers that seek an applicant's or current employee's salary history.

HB 3008: ADDS PENALTIES FOR EMPLOYERS THAT COMPEL, COERCE, OR INDUCE EMPLOYEES TO COMPLETE FALSE WAGE AND HOURLY DOCUMENTS

Signed into law, *House Bill 3008* states that an employer may not compel, coerce, or otherwise induce or attempt to induce an employee to create, file, or sign documents that contain hours of work or compensation received that the employer knows are false. This bill further provides a private cause of action for violations, allowing for an award of actual damages or \$1,000 for each violation, including attorneys' fees and costs. Importantly, the new law defines each pay period in which a violation occurs or continues to occur as a separate violation. HB 3008 becomes effective January 1, 2018.

SB 398: REQUIRES EMPLOYERS TO PROVIDE NOTICE TO EMPLOYEE OF EARNED INCOME TAX CREDITS

Senate Bill 398, also signed into law, requires employers to provide written notice to each employee of both state and federal earned income tax credits. The notice must (1) be in English and in the language the employer typically uses to communicate with employees; (2) be sent annually with the employee's W-2 forms; and (3) provide website addresses for the Internal Revenue Service and the Department of Revenue where the employee can find information about state and federal earned income tax credits. SB 398 becomes effective in September 2017 (91 days after the 2017 legislative session adjourns sine die).

TAKE AWAY

Employers should immediately take steps to review their employment applications, hiring and payroll processes, and employment policies to ensure compliance with Oregon's new laws.

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