



Employment Law Note

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Newest Expansion of Washington State's Pay Equity Legislation Bars Employers from Seeking Job Applicant's Wage and Salary History



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In 2018, Washington State joined the ranks of states enacting expanded legislation designed to achieve gender-based pay equity when it enacted the Washington Equal Pay and Opportunities Act (the "EPOA"). The EPOA significantly expanded Washington's then-existing gender pay law for the first time since 1943 by creating additional pay equity requirements for Washington employers. On May 9, 2019, Washington Governor Jay Inslee signed a bill further expanding requirements for employers under the EPOA by prohibiting employers from seeking a job applicant's wage or salary history. The legislature's stated intention behind the expanded requirements—which will go into effect on July 28, 2019—is as an "additional step towards gender equality" for employees in Washington State.

The 2018 Washington Equal Pay and Opportunities Act

The existing EPOA enacted in 2018 clarified the steps employers are required to take to achieve gender pay equity among "similarly employed" employees, including what employers must show to prove that any compensation differentials are based in good faith and on bona fide job-related factors consistent with business necessity and not due to any gender-based differential. Under the EPOA, employees are "similarly situated" if they work for the same employer; the performance of the job requires similar skill, effort and responsibility; and the jobs are performed under similar working conditions. The EPOA additionally

prohibits employers from requiring nondisclosure agreements regarding wages or requiring employees to sign a waiver disallowing disclosure of wages. Further, the EPOA prohibits employers from discharging an employee for discussing wages with others.

New Pay Equity Requirements for Washington Employers Effective July 28, 2019

The Washington State legislature's 2019 expansion of the EPOA was implemented with the stated objective of helping to equalize wages paid to women and men possessing the same levels of education and experience. The changes prohibit employer inquiries into applicant wage or salary history and compel more transparency regarding wage scales for open positions.

Specifically, beginning July 28, 2019, the following prohibitions and requirements will take effect:

- Employers may not seek the wage or salary history of an applicant, either from the applicant or his or her former employer.
- Employers may confirm an applicant's wage or salary history only (1) if the applicant has voluntarily disclosed his or her wage or salary history, or (2) after the employer has negotiated and made a job offer, including the amount of compensation, to the applicant.
- After an applicant is offered a position or promotion, s/he can request the minimum wage or salary for that position. If the applicant makes that request, the employer must disclose

the minimum wage or salary for the position offered. In circumstances where no scale or salary range exists, the employer “must provide the minimum wage or salary expectation set by the employer prior to posting the position, making a position transfer, or making the promotion.”

The salary history ban applies to all Washington employers, regardless of size. The requirement to disclose wage and salary information to certain applicants and employees applies only to Washington employers with 15 or more employees.

Employers that do not meet these requirements are subject to penalties similar to those imposed for violations of the other equal pay provisions. The penalties may include civil actions, fines, actual damages, statutory damages, interest going back four years prior to the complaint, and reasonable attorneys’ fees and costs.

Key Takeaway for Employers

In anticipation of the July 28, 2019 effective date for the expanded prohibitions and requirements under the EPOA, Washington employers should take steps to ensure that applicants after this date are not asked to disclose their salary or wage history. To this end, employers should review existing job applications and any related hiring documentation to ensure that any requests for a job applicant’s wage or salary history is

removed. Employers should additionally consider training managers, supervisors and/or recruiters about the EPOA’s restrictions and requirements, including that applicants are not to be asked about their prior wages or salaries, and that any confirmation of such information may only be made after an offer of employment is made. Finally, employers should evaluate their compensation practices to ensure that they will be able to provide wage scales or salary ranges to applicants and employees upon request.

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