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July 23, 2019

Washington's Salary History Ban and New Wage Disclosure Requirements Take Effect July 28

Recently enacted amendments to Washington's Equal Pay and Opportunities Act (EPOA) will take effect on July 28, 2019. The Washington legislature passed the EPOA in March 2018, expanding Washington's gender pay equity law for the first time since its enactment in 1943. A little over one year later, on May 9, 2019, Governor Jay Inslee signed into law **House Bill (HB) 1696**, which amends and further expands the EPOA.

The EPOA prohibits discrimination in compensation between similarly employed employees on the basis of gender, bans gender-based disparities in career advancement opportunities and bans retaliation against employees who complain about unequal pay or engage in other protected activity under the law.

The newly amended EPOA, with some exceptions, will outlaw inquiries about wage or salary history and require employers to provide applicants (and employees seeking to make internal transfers) with the wage scale or salary range for the position upon request. In enacting HB 1696, the legislature found that employer inquiries into salary history have contributed to persistent earning inequalities because women historically have been offered lower initial pay than men for the same jobs, even when their levels of education and experience were the same or comparable.

### **Ban on Inquiries Into Salary or Wage History**

The EPOA's new amendments prevent employers from seeking job applicants' wage or salary history directly from the applicants or indirectly through their previous employers. There are two exceptions, however, to the general ban. Employers may confirm an applicant's salary history if:

- The applicant has "voluntarily disclosed" it; and
- The employer has already negotiated with the applicant and made a job offer, including compensation.

For purposes of the amendments, "compensation" is defined as "discretionary and nondiscretionary wages and benefits provided by an employer to an employee as a result of the employment relationship."

### **Employers Must Provide Wage Information Upon Request**

Under the EPOA amendments, if requested by an applicant, an employer is required to provide the minimum wage or salary for the position being sought. The timing of the request also matters—the employer must provide the wage or salary information to the applicant only *after* making an initial job offer.

Also, if requested, employers must provide a "wage scale or salary range" to a current employee who is offered an internal transfer, a new position or a promotion. If no wage scale or salary range exists for a job, the employer must instead provide the minimum wage or salary expectation that it set prior to posting the position or offering the transfer or promotion to the current employee.

The salary history ban under HB 1696 covers all Washington employers, irrespective of size, but the requirement to disclose salary information to certain applicants and employees applies only to employers in the state with 15 or more employees.

## **Enforcement**

To enforce the law, employees may file either a complaint with the Washington State Department of Labor and Industries, which will investigate the alleged violation, or their own civil lawsuits. If a violation is found, the employer can be liable to the aggrieved employee for actual damages, statutory damages (equal to actual damages or \$5,000, whichever is greater), interest, and attorneys' fees and costs. If the employer has engaged in a pattern of violations, additional penalties may be imposed.

The EPOA also makes it a misdemeanor to discriminate against employees with respect to compensation. Although the statute of limitations for a violation is three years, employees may recover wages for up to four years from the time of their complaint.

## **Key Takeaways for Employers**

Carefully review job applications and recruiting materials to ensure that they do not ask for an applicant's salary history during the initial hiring process. Any managers or other employees involved in hiring should be trained not to inquire about an applicant's previous pay rate or salary. That information may be requested only after a job offer is made to the applicant (including the terms of compensation).

In addition, make sure to set salary ranges, pay scales or minimum salary expectations for each position before posting it externally or internally. Companies should be ready to provide the information to an applicant, including an applicant for an internal transfer, upon request.

Finally, take steps to ensure that no one retaliates against employees or applicants who ask for the salary range or otherwise assert their rights under the EPOA.

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