



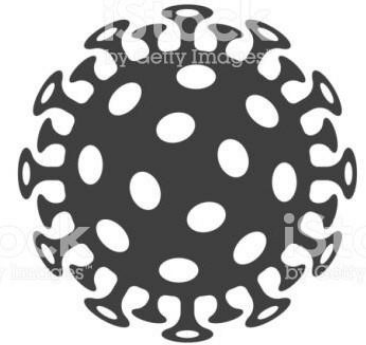
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Oregon Employment Legislation Since 2015

1. Minimum wage
2. "Ban the box" (criminal history checks)
3. Predictive Scheduling
4. Retirement Accounts
5. Sick Leave
6. Pregnancy Discrimination
7. Paid Sick Leave
8. Social Media
9. Wage transparency
10. Pay Equity
11. Nondisclosure Agreements
12. More Pay Equity
13. Noncompetition Agreements



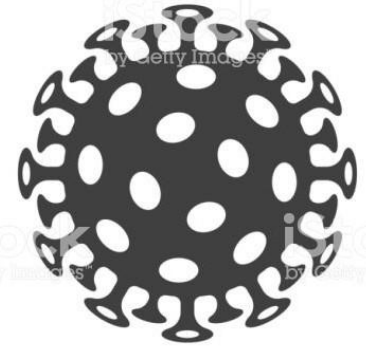
Covid-19 Related Issues



CORONAVIRUS
(Novel Coronavirus)

- **Send Sick Employees Home (Yes)**
- **Can You Conduct Health/Symptom Checks (Yes)**
- ***Should* You Conduct Health/Symptom Checks?**
- **FFCRA (federal) Sick Leave**
 - **Paid Leave – even if not subject to FMLA**
 - **Added To Other Paid Leave**
 - **May Include Leave To Cover School Closures**
 - **May Allow Employees To Telecommute**
- **Reopening – Liability to Third Parties?**

Covid-19 Related Issues



CORONAVIRUS
(Novel Coronavirus)

Resources:

- Oregon Health Authority – Guidance for Employers
- CDC – Small Business Guidelines
- Federal OSHA – Guidance on Preparing Workplaces
- Oregon OSHA (primarily focused on agricultural practices, links to other guidance)
- U.S. Department of Labor – FFCRA (medical leave)

Note – federal/state guidelines are frequently changing

Wage Transparency



ORS 659A.355 – Unlawful to retaliate against employee for inquiring or disclosing wage information, or initiating an action or investigation related to the wage information.

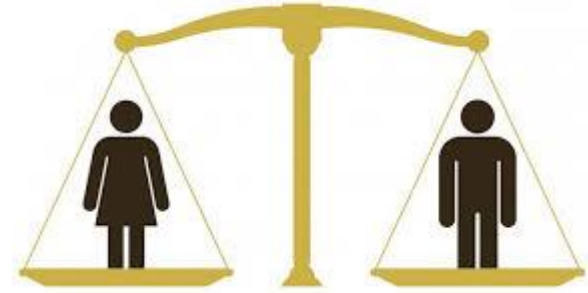
- **Includes inquiry or disclosure of other employees wages (don't have to answer inquiry, but cannot retaliate)**
- **Does not protect to HR personnel who improperly release information.**

Workplace Fairness Act

ORS 659A.370 – restricts non-disclosure agreements regarding harassment or discrimination claims

- Exception for settlement agreements (1) with an alleged victim *if the victim requests* the nondisclosure, and is given 7 days to revoke; or (2) with the alleged perpetrator
- Statute of limitations for workplace discrimination expanded to 5 years
- Notice requirement effective October 1, 2020; BOLI is charged with creating a template

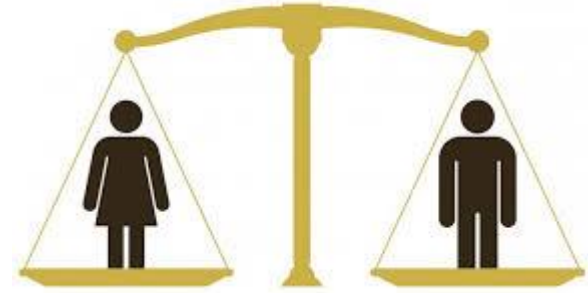
PAY EQUITY LAW



ORS 652.210 *et seq.*:

- ❖ Prohibits discrimination in compensation for “comparable work” based on protected categories
- ❖ Prohibits employers from asking or considering prospective employees’ past compensation when setting compensation. Does not apply to current employees
- ❖ Requires employers to provide notice to employees of these requirements

PAY EQUITY LAW

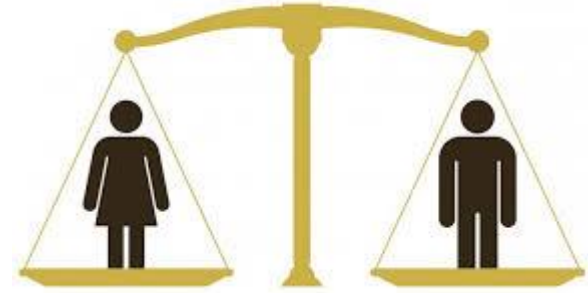


How does it change existing anti-discrimination law?

Arguably, puts burden of proof on the employer to prove non-discrimination

Limits justifications for pay differential – work not “comparable”, or “bona fide system” of setting compensation

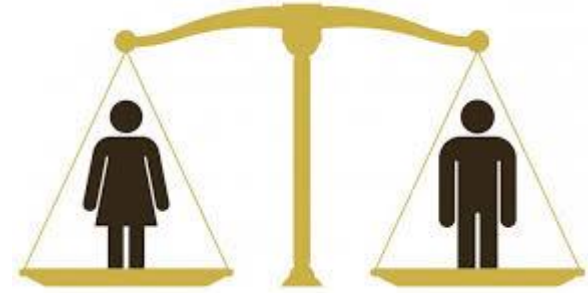
PAY EQUITY LAW



Cannot discriminate among “employees” as to “wages or other compensation”

“Compensation” includes bonuses, benefits, and equity-based compensation

PAY EQUITY LAW

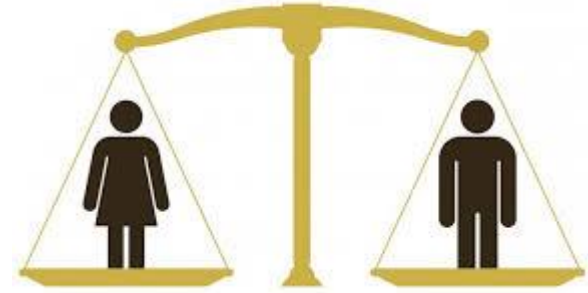


“work of comparable character”

**Requires substantially similar knowledge, skill, effort, responsibility and working conditions . . .
regardless of job description or job title**

50 factors listed in OAR 839-008-0010

PAY EQUITY LAW

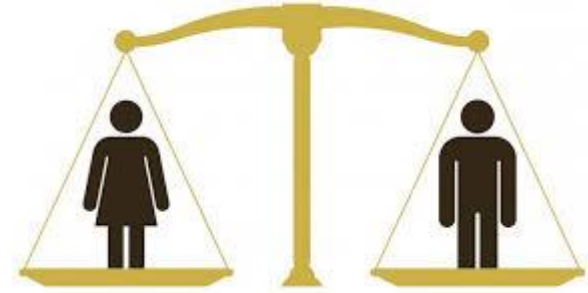


“Bona fide factors” for pay difference:

Experience, education, training, travel, location

“System” of seniority, merit, or production – “consistent and verifiable method” in use at time of alleged violation

PAY EQUITY LAW



- ❖ Enforced exclusively by BOLI until 2024; then allows civil cause of action.
- ❖ Damages include backpay, liquidated damages equal to the back pay, compensatory (noneconomic) damages, punitive damages.
- ❖ Mitigation of damages – if employer completes an “equal pay” analysis three years prior to the lawsuit, the damages are limited to back pay and attorney fees.
- ❖ May not reduce salaries based on equal pay analysis

PAY EQUITY LAW

“Equal Pay Analysis”

ORS 652.235:

“One way to approach an equal-pay analysis is to first determine which employees are performing work of comparable character. . . . Once employees have been categorized based on work of comparable character, employers should look for any compensation discrepancies between employees within those groups. For employees who are compensated differently than other employees performing work of comparable character, the employer should determine if the differences are justified by any bona fide factors provided by law. If the difference is not linked to any bona fide factors, the lower paid employees’ compensation must be adjusted to match that of equivalent employees . . .”

-- BOLI technical assistance



PAY EQUITY LAW – 2019 “FIX”

Senate Bill 123:

Clarifies definition of “system”

Allows pay differential for modified work due to injury or medical condition

Allows pay analysis to review practices rather than inquire about whether employees are part of a protected class

PREGNANCY DISCRIMINATION

House Bill 2341: unlawful employment practice to deny reasonable accommodations regarding pregnancy and related medical conditions

“Reasonable accommodations” include longer breaks, schedule modifications, assistance with manual labor, etc.

“Undue hardship” requires significant difficulty or expense; same factors as under disability discrimination law

May not require employee to take medical leave if reasonable accommodation is available

Requires written notices (BOLI creating template)

NONCOMPETITION AGREEMENTS

House Bill 2992 – amended ORS 653.295

Employer must provide copy of agreement within 30 days of termination

Effective as of January 1, 2020

“BAN THE BOX” – ORS 659A.360

Unlawful to exclude applicant from initial employment interview because of past criminal conviction.

If no interview is conducted, cannot require criminal history disclosure prior to “conditional offer of employment” (offer conditional on background check).



PREDICTIVE SCHEDULING

ORS 653.412 *et seq.* – employer must provide “good faith estimate” of work schedule on hire, and 7-days notice of work schedule

Applies to retail/hospitality establishments with 500+ employees worldwide

Employees may volunteer for a standby list

Must provide additional compensation for schedule changes without sufficient notice

SICK LEAVE

ORS 653.601 *et seq.*: 1 hour accrued per 30 worked, up to at least 40 hours

10+ employees – paid leave

Less than 10 employees, can be unpaid leave

Carry over 40 hours (or paid at end of year)

Can have plans more protective (but not less)



PAID MEDICAL LEAVE

House Bill 2005: Creates employer-funded insurance program for medical leave, similar to unemployment insurance. Effective January 1, 2023.

Similar laws in seven other states including California and Washington

Funded with payroll contributions

Applies to “serious health conditions” – overlaps with OFLA definition

Employers’ officers and owners may be personally liable for violations

OregonSaves (retirement plan)

State-run IRA. Mandatory to offer to employees unless employer sponsors equivalent or better plan.

No employer contribution required for state plan.

Must get certificate of exemption if sponsoring own plan.

Final phase-in this May

Senate Bill 164 – failure to comply is unlawful practice