

## **BOLI Rulemaking to implement the Oregon Equal Pay Act Public comment period extended!**

In 2017, the Oregon legislature adopted the most comprehensive pay equity legislation in the country. That law, [HB 2005](#), passed unanimously in both chambers after the original legislation was amended as part of a compromise between business and labor representatives. The law will go into effect in 2019 and reform the way employers consider payroll and communicate with their employees. As [recent articles](#) have suggested, it is incredibly COMPLICATED. To learn more about what you will need to do to comply, [click here](#).

### **What do you need to know as a business owner or Human Resources professional?**

- As of October 2017, it is no longer legal to ask a job applicant for prior salary history.
- An employer may not lower the wages of employees to bring their overall compensation structure into compliance with the law.
- Beginning on January 1, 2019, the law requires that employees be paid equally for comparable work regardless of protected class status. Additionally, there are specific requirements regarding communications with employees and applicants about compensation. Once the draft BOLI rules are finalized, businesses have until the end of 2018 to review employee handbooks, new hire processes, and pay practices to move towards compliance.
- **CORRECTION:** A private right of action is triggered on January 1, 2019 for the bill, except for questions about past compensation (For that section, civil penalties are triggered in 2024). This means that **businesses have a VERY SHORT window to get in to compliance** before employee lawsuit provisions come in to play!

### **Help OSCC weigh-in during the rulemaking process!**

Although the language of the bill isn't up for debate in the rulemaking, BOLI's interpretation is.

Pick two to four points from the outlined talking points or letter below and send to BOLI. Don't forget to customize your comments! When you're ready, send your comments directly to **Christine Lewis, BOLI Legislative Director** at **christine.e.lewis@state.or.us** by **October 12, 2018**.

Also, please cc your state representative and/ or senator on your comments. This law is complicated and comprehensive, and they should know that employers across Oregon are working towards compliance. OSCC will need all-hands-on-deck to address any issues with implementation in the 2019 session.

### Suggested talking points

- Thank you for the opportunity to comment on the draft rules to implement HB 2005.
- I support the principle of equal pay for equal work.
- However, Oregon's Equal Pay Act is broad-reaching and complex, and I ask BOLI to clarify a couple of issues in the draft rules:
  - **Include commuting and travel incentives as a bona fide factor under OAR 839-008-0015(1)(d-e).** With the current workforce shortages, employers need every tool at their disposal to recruit workers to the job site, particularly in rural Oregon. Often this comes in the form of a travel incentive or hourly pay increase for an employee who commutes the extra distance to reach a remote job location.
  - **Simplify the definition of “system” under OAR 839-008-0015(2) to help small employers comply** Small businesses are unlikely to have a written record describing the merit-based “system” they relied on to reward or incentivize employees over the years. A simplified definition of “system” would make the law more accessible to employers of all sizes.
  - **Revise OAR 839-008-0020 to mirror the language of the statute, requiring equal compensation for work of comparable character, not equal benefits.** OAR 839-008-0020 erroneously requires an employer to offer the same benefit options to all employees performing work of a comparable character. This provision is unnecessarily narrow, and it puts small businesses in the uncomfortable position of not being able to provide flexibility to employees with special circumstances due to the cost of providing the same benefit options to all employees.
  - **Provide employers with a free “pay calculator tool” similar to Massachusetts’s pay equity calculator.** It is important that all employers have the opportunity to achieve the partial safe harbor described in HB 2005, even if they lack resources needed to hire consultants and lawyers. Employers need this tool before the private right of action goes into effect in January.
- Thank you for the opportunity to comment today.

**Draft letter from local chamber member**

October xx, 2018

Christine E. Lewis  
800 NE Oregon Street  
Suite 1045  
Portland, OR 97232

Dear Ms. Lewis:

Thank you for the opportunity to provide feedback in response to the draft rules to implement Oregon's Equal Pay Act.

I strongly support the principle of equal pay for equal work. Oregon's Equal Pay Act is the first of its kind in the nation, and it is critical that employers and employees have a good understanding of the requirements of the statute and subsequent rules prior to implementation in January 2019.

To that end, I respectfully request the following changes be made to assist businesses in meeting the requirements of the law:

Please allow travel incentives to be considered as a bona fide factor under OAR 839-008-0015(1)(d-e). With the current workforce shortages, employers need every tool at their disposal to recruit workers to the job site, particularly in rural Oregon.

I ask that you simplify the definition of "system" under OAR 839-008-0015(2). Small businesses are unlikely to have a written record describing the merit-based "system" they relied on to reward or incentivize employees over the years. A simplified definition of "system" would make the law more accessible to employers of all sizes and organizational structures. Please also revise OAR 839-008-0020 to mirror the language of the statute, requiring equal compensation for work of comparable character, as opposed to equal benefits. As written, the draft rule limits an employer's ability to

accommodate an employee's special circumstances due to the cost of providing the same benefit options to all employees. Please align this section with the statutory language.

As a final point, I ask that BOLI provide employers with a pay calculator tool, similar to Massachusetts's "equal pay calculator" before January 1, 2019. With 10 protected classes, many Oregon employers will need technical assistance to conduct the self-evaluation provided in the statute. Access to a free "equal pay calculator" would assist smaller businesses in moving towards compliance.

Thank you for the opportunity to comment on the draft rules to implement HB 2005.

Sincerely,