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ATTORNEYS AT LAW

CLIENT ALERT

New Law Allows Oregon Employees to Sue for Equal Pay

What has changed?

As of January 1, 2019, Oregon employers must pay their employees equally for comparable work regardless of gender or any of Oregon's ten other protected classes. While such equal treatment has long been a requirement imbedded in state and federal anti-discrimination laws, Oregon's new statute takes it further by restricting employers to a closed list of reasons that may lawfully justify a pay disparity and adding an employee private right of action. The result is that employers are now prohibited from paying employees of a protected class differently from their peers unless the reason for the pay disparity is based on the position and can be entirely explained by one of the following: (1) a seniority system; (2) a merit system; (3) a system based on quality or quantity of production, including piece-rate work; (4) workplace locations; (5) travel, if travel is regular and necessary for the employee; (5) education; (6) training; (7) experience; or (8) a combination of these factors.

What are the penalties for noncompliance?

Employees who prevail in a suit under the new law can obtain compensatory damages, punitive damages, attorney fees, and an award of back pay for the duration of the discriminatory pay practice or two years, whichever is less. But the law also includes a partial and somewhat narrow safe harbor from damages. Employers may disallow awards of compensatory and punitive damages if the employer can prove that they (a) conducted an equal pay analysis in the past three years, (b) eliminated the wage differential for the plaintiff, and (c) took reasonable steps to eliminate pay disparities for other employees sharing the plaintiff's protected class. Having an equal pay analysis does not, however, exempt employers from liability for the employee's attorney fees and back pay.

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What is an Equal Pay Analysis?

An equal-pay analysis is an evaluation process to assess and correct wage disparities among employees who perform work of comparable character. The analysis should be reasonable in detail and scope in light of the employer's size and must include each protected class represented in the workplace.

To conduct an equal pay analysis, employers should start by reviewing actual job duties of their employees to determine which are performing work of a comparable character. The compensation arrangements (including benefit packages) should be compared among employees with comparable duties, and any differences should be analyzed to determine whether a statutory justification might apply to explain the difference. Any difference in pay not explained by a lawful reason should be changed, and must be corrected without reducing any employee's compensation, as the law prohibits employers from reducing an employee's compensation as a compliance measure.

What should be done to comply?

Conducting an equal pay analysis is the best way to audit your current pay practices for equality. This evidence may be used in court only to disallow an award of compensatory or punitive damages; it may not be used against you in the event the analysis comes out showing disparities. For more information or advice about how to conduct and document an equal pay analysis, contact Gleaves Swearingen LLP at 541-686-8833 and ask to speak with an employment attorney.