

State of Oregon Pay Equity Analysis Project

Q&A for HR Professionals

Chief Human Resources Office

Categories

About the Pay Equity Bill	1
Changes to HR state policy	3
Use of current and previous salary data	4
Conducting an Internal Assessment	5

About the Pay Equity Bill

Q: What is HB 2005?

A: HB 2005 relates to pay equity and provides definitions relating to comparable work. It is intended to close wage gaps, to extend protection to 10 protected classes, and to expand potential employer liability. The law allows differences in pay for "work of a comparable character" based on the following criteria:

- Seniority
- Merit
- System measuring quality or quantity of work (i.e., piece rate)
- Work location
- Travel
- Education
- Training
- Experience or;
- Any combination of the above (must account for entire compensation differential)

HB 2005 applies to all Oregon employers, not just Oregon state government, with the exception of federal workers. For the entire bill language, refer to [HB 2005](#).

Q: When does HB 2005 take effect?

A: Portions of the law take effect at different times. Starting Oct. 6, 2017, it will be unlawful to ask for current or previous salary information from applicants outside of state service.

On Jan. 1, 2019, definitions for "compensation," "work of comparable character", and "protected classes" go into effect, in addition to defined statutory timelines and damages for complainants. Further, employers are allowed an affirmative defense to disallow an award of compensatory and punitive damages if the employer can demonstrate that it has completed an equal-pay analysis within three years prior to the complaint and that the employer is making reasonable and substantial progress toward eliminating wage differentials for protected classes.

Effective Jan. 1, 2024, civil actions against employers who seek salary history are permitted.

State of Oregon Pay Equity Analysis Project

Q&A for HR Professionals

Chief Human Resources Office

Q: If liability is found based on inequitable compensation once that part of the legislation is in effect – is there personal liability attached for the hiring manager or is the liability limited to the agency/state?

A: Managers may reduce the risk of personal liability by making a good faith effort to follow state HR policies, obtain advice and follow guidance provided by their agency HR staff and managers.

Q: HB 2005 references an “Equal-pay analysis”. What is it?

A: The Equal-pay analysis means an evaluation process to assess and correct disparities among employees who perform work of comparable character across the Executive Branch. As an employer, Oregon state government is required to conduct this analysis every 36 months at a minimum. The first equal-pay analysis will take place in 2018 and requires that we collect additional data from employees. We will collect the data using a survey sent to all Executive Branch employees.

Q: What is “work of comparable character”?

A: As stated in HB 2005, “Work of comparable character” means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work regardless of job description or job title.

Q: Section 2(d) of the statute states:

“This paragraph is not intended to prevent an employer from considering the compensation of a current employee of the employer during a transfer, move or hire of the employee to a new position with the same employer.”

This statement seems to be contradicted by Section 4 which states, “It is an unlawful practice under ORS chapter 659A for an employer or a prospective employer to seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee.”

Do you have any insight or will this be clarified by policy revision?

A: We understand from legislative testimony and discussions with sponsors of the bill, the intent is pay for new employees should not be driven by salary history. There were a large number of revisions made to the bill based on stakeholder input, and the final bill had language allowing an employer to confirm salary history after a job offer is made. Clearly, employers already know the salary history of their current workforce. Generally, existing policies and standards for compensation changes upon internal movement of employees will remain the same but there may be additional flexibility within those standards to ensure current employees who are transferred, promoted etc., receive fair and equitable compensation. The Pay Practices policy addendum will provide clarification for our how current employee salaries will be determined on demotion, transfer or promotion.

State of Oregon Pay Equity Analysis Project

Q&A for HR Professionals

Chief Human Resources Office

Changes to HR state policy

Q: Will CHRO update the Pay Practices policy or develop new policy to support implementation of the bill? Will a toolkit be developed?

A: Yes, the CHRO, in conjunction with the Governor's Office and advisors from other state agencies, are currently working on an addendum to the policy, particularly around salary placement standards and definitions. "Tool kits" or other guides will be available and updated as more questions are raised and analysis continues. The addendum is an initial approach to support implementation of the bill. Formal revision of relevant policies will take place at a later date.

Q: When do you anticipate DAS will have policy updates, process information and guidance available to the agencies? Have you established internal project deadlines you can share with us so we can better anticipate and coordinate our activities?

A16: Our target date for revisions to state HR policies is early October 2017.

Q: Do you anticipate DAS implementing any changes for pay equity prior to Oct. 6?

A: We have already deactivated the "Current/Previous Salary" field in NeoGov (eRecruit). We also plan to issue addenda to the Pay Practices and Alternative Leave state HR policies by this date.

Q: Is DAS developing training for agencies/managers on how to determine equitable compensation?

A14: Yes. Policies, tools, guiding principles and training are all in development at this time. Estimated date of delivery is October 2017.

Q: Will there still be pay-line exceptions for compression or other reasons that are currently acceptable under the DAS policy?

A: Yes. The current pay-line exception policy discusses the importance of considering internal salary relationships. This will continue to be a very important consideration in determining the use of pay-line exceptions.

Q: How will this law impact vacation accruals?

A: There should not be an immediate impact on vacation accrual rates. The accrual rate is largely a function of seniority. Seniority is one of the factors upon which you can make distinctions in an individual's level of compensation. Offering higher than normal accrual rates or advances on leave should be based on the candidate's qualifications (i.e., education, experience and training) for the job. We will be modifying our Alternate Leave Provisions policy to align with this direction as well.

State of Oregon Pay Equity Analysis Project

Q&A for HR Professionals

Chief Human Resources Office

Use of current and previous salary data

Q: Will initial implementation affect only new hires to state service or any offer of employment (promotion, transfers, etc.)?

A: While the law's first effective date only makes it unlawful to seek current or previous salary information from applicants outside of state service, we will begin implementing a wider scope for salary placement consideration in line with the ultimate intent of the law. CHRO will provide tools, guidelines and training for agencies to begin analyzing salary placements for all new hires, promotions, transfers and other types of internal appointments.

Q: If we make an offer to an applicant who is new to state service, based on the statutorily allowed factors, and the applicant declines the offer because it is lower than his or her current salary, can we use the candidate's current or past salary as a consideration in the negotiation process? Do we have to let the candidate walk away because we cannot match or exceed their existing salary?

A: Using the applicant's salary history as a consideration in setting the pay rate will be inconsistent with state policy and, in some circumstances, may be unlawful. There can be negotiation but it should be focused on the value of the candidate's relevant experience, training, education and merit as those factors relate to others performing work of a comparable character. Being transparent with candidates about our pay philosophy being centered on equity considerations should be emphasized. Let the candidate make the case based on their qualifications. There could be times you do not come to an agreement on pay with a candidate because providing his or her desired salary would create an unwarranted inequity in salary.

Q: The law does not restrict employers from obtaining past salary information after an offer of employment is made. What guidance is provided in relation to this?

A: Using prior salary information at any point in the salary setting process may have the effect of perpetuating existing external pay gaps between minority and non-minority groups or between genders. Therefore, the State has made a policy decision not to collect or use salary history after an employment offer is made.

At the point of a salary offer, a review of the candidate's qualifications relative to the job and an internal assessment relative to current, similarly situated staff should be completed. You should evaluate a counter offer from a candidate only based on additional information about his or her education, training, experience, merit, or other factor statutorily allowed or policy. Consider whether the pay rate would yield an equitable salary relationship or create an inequity. If the requested salary creates an inequity, negotiate only up to the level that you are able without creating an internal salary inequity.

State of Oregon Pay Equity Analysis Project

Q&A for HR Professionals

Chief Human Resources Office

Conducting an Internal Assessment

Q: Who determines the initial salary offer?

A: It depends on the agency. Typically the hiring manager, appointing authority or as delegated as the agency appointing authority.

Q: When determining what to offer new-to-state-service employees, will compensation levels of existing employees be considered within a particular unit, within the agency, or across the entire state enterprise?

A: The State of Oregon Executive Branch is considered the "employer" in the context of the law. We encourage you to start internal assessments as soon as possible. The breadth of the equity review greatly depends on the type of job – who and where are people doing "work of a comparable character." Assessment may only be at the unit level for specialized jobs, or it may be on a division or agency-wide basis for others.

Q: Do you include represented and unrepresented employees in the internal assessment?

A: Yes, include all employees who do work of a comparable character.

Q: Progressively responsible experience may also happen in the same position in areas such as becoming a lead-worker, leading a special project, etc. How might this be evaluated, especially in positions where lead work may be inherent? Additionally, if this is within the same job for a candidate, how do we evaluate that from the application, unless applicant has broken up their job into multiples or added specific dates to additional assigned duties?

A: When employees respond to the survey about their work history or when candidates apply to a position, they may describe project assignments or additional added responsibilities assigned by his or her manager. These may indicate a progression of responsibilities within a given job during the course of one's career. It would be appropriate to indicate when those responsibilities applied (e.g., "In 2015, I led a 9-month project to streamline the legislative tracking and communication process for my agency"). Leadwork or Team Lead may also be included in the description of experience. While these assignments are generally distinguished with extra "differential" compensation while the assignment is in effect, they may also contribute to the employee's qualifications for a higher level or managerial position.

If time performing progressively responsible work within a candidate's historical experience is not obvious, there is nothing preventing one from asking the candidate for clarification to determine an initial salary offer or during the negotiation period. Agencies should be cautious that only information related to the position be considered (e.g., lead work experience should not be used as a factor to place a candidate at a higher salary than someone who does not have lead work experience if lead work is not relevant to the position).

State of Oregon Pay Equity Analysis Project

Q&A for HR Professionals

Chief Human Resources Office

Q: Should agencies be working on developing some kind of matrix table for each classification as a guideline to offering steps?

A: The CHRO will provide general standards for initial salary placement based on the experience, education, and training of a candidate in relation to the position. We do advise agencies who are recruiting to fill a vacant position to consider and gather in advance the type of information they will need to complete an internal assessment for pay equity. This information should include a list of current staff performing work of a comparable character and an outline of their qualifications (e.g., experience, education, training, seniority etc.).