



Employment Law Note

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Prepare Now for the New Equal Pay and Opportunities Act Amendments



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The Washington legislature recently expanded the scope of the Equal Pay and Opportunities Act (“EPOA”) to cover claims beyond gender-based discrimination. Starting July 1, 2025, in addition to sex, the EPOA’s remedial scheme will include claims based on age, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal by a person with a disability. This note provides an overview of the EPOA and its forthcoming amendments as well as corresponding issues and concerns for employers.

Background

The EPOA, among other things, prohibits discrimination “in any way in providing compensation based on a person’s gender between similarly employed employees.” RCW 49.58.020. In conjunction, an “employer may not, on the basis of gender, limit or deprive an employee of career advancement opportunities[.]” RCW 49.58.030.

Claims under the EPOA turn on fact-intensive evaluations of whether disparately paid employees were, in fact, “similarly employed.” RCW 49.58.020(2). Employees are “similarly employed” when “the individuals work for the same employer, the performance of the job requires similar skill, effort,

and responsibility, and the jobs are performed under similar working conditions.” *Id.*

Disparate pay does not contravene the EPOA if “differential in compensation [is] based in good faith on bona fide job-related factor[s]” including differences in “education, training, or experience,” “seniority,” “merit,” hitting performance targets, and “regional difference(s).” RCW 49.58.020(3)(a)-(b). Importantly, “[t]he employer carries the burden of proof” to establish a “bona fide job-related factor” exists. RCW 49.58.020(3)(e).

The EPOA’s considerable remedies include criminal penalties. RCW 49.58.020(1). The EPOA also provides employees with a private right of action to litigate statutory violations in court. Meritorious claims entitle employees to damages *at least* amounting to \$5,000, one percent interest per month on all owed compensation, costs, and attorneys’ fees. RCW 49.58.070(1). Aggrieved employees may also seek reinstatement and other injunctive relief. *Id.* Alternatively, an employee may seek recourse through the Washington State Department of Labor & Industries. Employers found in violation of the Act are subject to fines including \$5,000 for the first violation and \$1,000 for any repeat violations.

Importantly, Washington courts have held that the EPOA’s remedies (including those explicitly concerning “employees” only, like RCW 49.58.070(1)) protect employees *and applicants* equally. *Atkinson v. Aaron’s LLC*, No. 23-cv-1742-BJR, 2024 U.S. Dist. LEXIS 85799, at *12-13 (W.D. Wash. May 10, 2024).

Amendments

Effective July 1, 2025, the EPOA's equal pay (RCW 49.58.020) and career advancement provisions (RCW 49.58.030) will be substantially extended to now cover claimants who are members of a "protected class," which is defined to include: age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal by a person with a disability.

Implications for Employers

The EPOA's 2025 expansive amendments expose employers to an increased risk of criminal and civil liability, especially in view of the judiciary's broad interpretation of the statute's provisions. In addition, the burden remains on the *employer* to prove any differences in pay between employees is warranted by a bona-fide job-related factor.

These amendments thus place employers in a precarious position. Luckily, employers have a little over a year (until July 1, 2025) to take proactive steps to prepare for the EPOA's changes, including the following:

- Amend applicable policies and handbooks to reflect the new iteration of the EPOA;
- Adopt written compensation policies, for internal use or otherwise, setting forth clear, objective, merit-based reasons underlying various pay levels;
- Apprise and train hiring managers and other HR professionals and hiring decisionmakers on the mechanics of the EPOA and its amendments; and
- Analyze or audit employees' payroll and workforce data to determine compliance with the EPOA's amendments.

Final Thoughts

Washington has continued with its commitment to expanding workplace protections. Liability for employers has correspondingly increased. Employers should compare these and other legislative changes against their own policies and procedures.

Employers with questions about the implications of the upcoming EPOA changes are encouraged to contact Sebris Busto James.

For more information about this month's Employment Law Note
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