Oregon's Equal Pay Act of 2017


Parity Software©

2019

Oregon: Changing the Pay Equity Landscape

Oregon Senate **unanimously passed** the **Equal Pay Act of 2017** with the goal of "shrink[ing] the stubborn pay gaps between genders, races and those in other protected classes by expanding protections for people who are regularly discriminated against, and by encouraging companies to **proactively** examine their own pay practices before a lawsuit is filed."

Oregon's Pay Equity Law
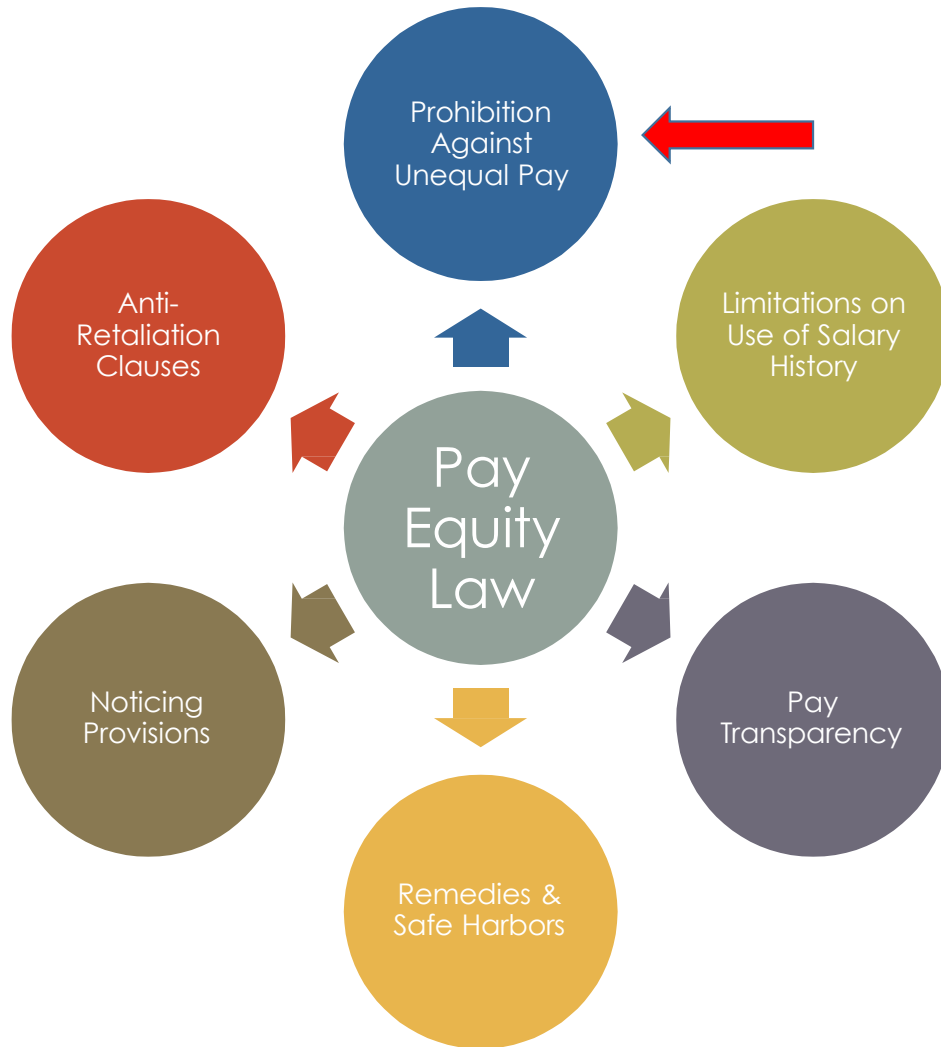
Effective Dates

- Prohibited from asking salary history: October 6,2017
- **Pay Equity enforcement by BOLI: January 1, 2019**
- **Pay Equity wage claim: January 1, 2019**
  - **Individual and class action**
- Anti-retaliation claim: January 1, 2019
- Notice requirements: January 1, 2019
- Private right of action (salary history): January 1, 2024

Expanded: unlawful employment practice

It is an unlawful employment practice….

> ➢ to pay one employee more *wages* than another employee for work of *comparable character*.

Expanded: Who is subject to this new law?

All Oregon Employers*:

Employers with 2 or more employees

All Oregon Employees:

- Race
- Color
- Religion
- Sex (gender)
- Sexual orientation (LGBT or perception)
- National origin
- Marital status
- Veteran Status
- Disability
- Age

* Federal Government excluded

Comparable Character Work

Comparable Work =

> "work that is <u>substantially</u> <u>similar</u> in **knowledge**, **skill**, **effort**, **responsibility** and **working conditions**…"

Compensation Definition

All compensation
- Salary
- Bonuses
- Fringe Benefits (car, meals, clubs, etc.)
- Stock
- Retirement
- Vacation
- Etc.

Step 1: Group Substantially Similar Jobs

Only Five Key Categories:

- Skill

- Knowledge

- Effort

- Responsibility

- Working conditions

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Step 1: Group Substantially Similar Jobs

- **Is Not** based upon job title
- **Is Not** based upon market salaries
  - Internal equity
- **Is** based upon 5 key categories
  - BOLI proposed guidance: sub-categories required
- **Is** objective, consistent and reproducible

Ex. Method 1: Eyeball Substantially Similar Jobs

Job Title: HR Information Specialist

- Skills
  - Advanced ability to complete tasks using this skill without assistance.
- Knowledge
  - Advanced with Bachelor's degree or a combination of education and relevant experience
  - Limited with 1-2 years of relevant experience
- Effort (Mental/Physical)
  - Minimal problem-solving
- Responsibility
  - Intermediate independent discretion
- Work Environment
  - Office

=

≈

≠
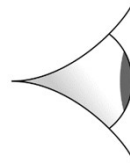
Job Title: IT Technician

- Skills
  - Intermediate ability to complete tasks using this skill
- Knowledge
  - Advanced with Bachelor's degree or a combination of education and relevant experience
  - Intermediate with 3-5 years of relevant experience
- Effort (Mental/Physical)
  - Minimal problem-solving
- Responsibility
  - Intermediate independent discretion
- Work Environment
  - Office

Ex. Method 2: Group/Weight Substantially Similar Jobs

- Example: Allocate percentages to identify comparable jobs
  - Skills: 25%
    - Technical skills 60%
    - Interpersonal skills 40%
  - Knowledge: 30%
    - Education 45%
    - Required Job Related Experience 45%
    - Required additional training 10%
  - Effort: 10%
    - Mental 60%
    - Physical 40%
  - Responsibility: 25%
    - Level of responsibility 40%
    - Independent Discretion/Independent Judgment 30%
    - Supervision 30%
  - Working Conditions: 10%
    - Physical danger 60%
    - Schedule 40%

Ex. Method 2: Group Substantially Similar

Name	Band	Score	
Chief Exec Officer HIGHEST	1	831	📄 Job Description
CFO	2	784	📄 Job Description
Chief of Staff	3	593	📄 Job Description
HR Director	3	576	📄 Job Description
Director of Facilities	3	567	📄 Job Description
Director of QA	4	535	📄 Job Description
Systems Analyst	4	523	📄 Job Description
Programmer II	5	401	📄 Job Description
Senior Programmer Yes!	6	377	📄 Job Description
QA Engineer	6	370	📄 Job Description
Administrative Assistant II	6	368	📄 Job Description
Assistant to the President	6	356	📄 Job Description

Step 2: Pay Analysis

Key Employees Categories:

➢Seniority system

➢Merit system

➢System that measures earnings by quantity or quality of production

➢Workplace location

➢Travel

➢Education

➢Training

➢Experience

➢Any combination of factors

You must be able to explain the "entire compensation differential."

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Step 2: Pay Analysis

- **Is Not** negotiation
- **Is Not** potential
- **Is** based upon key employee categories
- **Is** objective, consistent and reproducible

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Ex. Method #1: Eyeball Pay Analysis
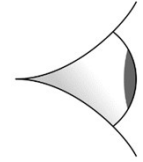
Job Title: HR Information Specialist

- Job Location: Sweet Home
- Travel: 10%
- Education: BS
- Relevant Experience: 3 years
- Performance Evaluation:
    - 2017: Meeting Expectations
    - 2018: Exceeds Expectations
- Salary:
    - Salary - $35,000/year
    - Bonus - $5,000/year

Job Title: IT Technician

- Job Location: Portland
- Travel: 10%
- Education: AA
- Relevant Experience: 2 years
- Performance Evaluation:
    - 2017: Exceeds Expectations
    - 2018: Exceeds Expectations
- Salary:
    - Salary - $40,000/year
    - Bonus - $7,500/year

$=$

$\approx$

$\neq$

Ex. Method 2: Pay Analysis- Statistically

- Example: Allocate percentages for bona fide factors
  - Seniority system 20%
    - Years in job
  - Merit system 10%
    - Performance review for the last year(s)
  - Travel 5 %
    - Percentage of work week traveling
  - Education 20%
    - Education above minimum required
  - Training 20 %
    - Extra training or certificates that the employee has earned
  - Experience 25%
    - Experience gained before and after joining the company

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Ex. Pay Analysis- Report

Employee Number	Employee Name	Job Title	Job Group	Employee Ranking
123456	Jo	HR Information Specialist	1	1
123489	CJ	IT Technician	1	2

- Employee #123456 Ranking breakdown
  - Workplace Location: Sweet Home
  - Travel
    - 10%
  - Education
    - BS
  - Experience
    - 3 years prior experience
  - Merit system
    - 2017: Meeting Expectations
    - 2018: Exceeds Expectations
  - Seniority system Years in job
    - 6 years in job
  - Training
    - No additional training

- Employee #123489 Ranking breakdown
  - Workplace Location: Portland
  - Travel
    - 10%
  - Education
    - AA
  - Experience
    - 2 years prior experience
  - Merit system
    - 2017: Exceeds Expectations
    - 2018: Exceeds Expectations
  - Seniority system Years in job
    - 1 year in job
  - Training
    - No additional training

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Step 3: Identify Wage Discrepancies

Create Worksheet

Adjustment Potential: $5,000

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
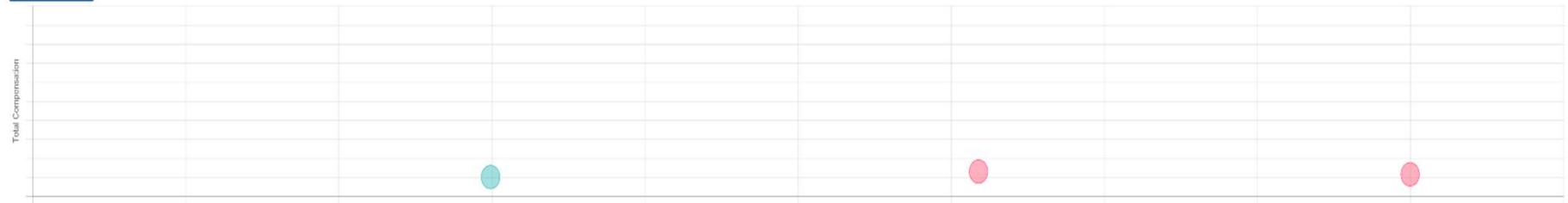
Group 6		Total Compensation Data					Employee Ranking Data							
Employee Name	Job Title	Total Compensation	Salary	Bonus	Paid Time Off	Other Benefits	Seniority	Merit	Travel	Education	Training	Experience	Location	Potential Adjustment
Jo Smith	HR Information Specialist	$35,000	$35,000	$0	$0	$0	19	0	0%	Bachelors	0	5	Portland, OR	⚠ Needs $5,000 to be on parity with CJ Jones
CJ Jones	IT Technician	$40,000	$40,000	$0	$0	$0	0	0	0%	Masters	0	5	Corvallis, OR	
Helen Clark	Executive Assistant	$30,000	$30,000	$0	$0	$0	5	0	0%	Associates	0	5	Portland, OR	

Step 3: Resolve Wage Discrepancies

Group	Employee Name	Rank	TCOMP Data					Employee Ranking Data							Potential Financial Adjustment	Action Taken	Details (Additional Notes)
			TCOMP	Salary	Bonus	Paid Time Off	Other Benefits	Seniority	Merit	Travel	Education	Training	Experience	Location			
1	Jo	1	$40,673	$35,000	$5,000	$673	$0	6	Meets Exceeds	10%	BS	None	3	Sweet Home	1.1 Jo needs $7596 raise to be on parity with 1.2 CJ		
1	CJ	2	$48,269	$40,000	$7,500	$769	$0	1	Meets Exceeds	10%	AA	None	2	Portland			
1	Harry	3	$38,673	$35,000	$3,000	$673	$0	1	Meets Meets	0%	AA	None	1	Portland			

Action Taken dropdown:
- Adjust salary/compensation
- No longer an employee
- Location exception
- Travel exception
- Relevant education exception
- Prior work experience exception
- Relevant training exception
- Other objective exception

$7,596

Expanded: Penalties

Failure to comply = "*Unpaid Wages*"

- Two years of Back Pay
  - One (1) year statute of limitations
    - *Starts over again each time compensation paid!*
- Penalty Wages
- Compensatory damages (emotional distress)
- Punitive damages (fraud, willful, multiple violations, etc.)
- **Attorney fees**

Safe Harbor: Review & Analysis

Employer may avoid some penalties *if* employer completed an equal pay analysis within prior three (3) years

NOTE: During review and analysis, an employer cannot eliminate wage differences by reducing the compensation level of an employee!!!

Step 4: Supporting Documentation - Job Description

General Purpose of Position

Position Title	Senior Software Developer
Position Number	SR-DEV-1
Division	STG
Department	IT
Reports To	President
Position Status	Full time
Position Hours and Workdays	Evenings
Date Created	2018-08-06 20:18:43
Non-Exempt	Non-Exempt

General Purpose of Position

Working with minimal supervision, perform the duties of a software engineer to provide clients(both internal and external) with software systems and packages to suit their needs.

Essential Functions

Reasonable accommodation

Programming (65% of the

Use requirements docs, t
infrastructure to achieve

Requirements Gathering

Meet with the client to un
technology set.

Project management (20%

Provide the production s
resource.

Competencies:

Personal Skill
Requires demons
standards, initiat

Management Ski
Requires interme
acumen, organiz

Leadership Skill
Requires advanc
mission focused

Required Skills

Interpersonal skills:

Responsibilities include internal and external interactions that require an expert level of diplomacy and the ability to deal with and influence individuals in all types of positions. Internal and external interactions frequently involve difficult negotiations with a well-developed sense of strategy and timing. Negotiates, persuades and presents organizational policies, strategies and complex reports for the organization or a major department, division, or function. Responsibilities require a broad, in-depth proficiency of analytical and interpersona

Travel

Require Travel 10%

Disclaimer

Please note that this job description is not designed to cover or contain a comprehensive listing of activities, duties, or responsibilities that are required of the employee for this position. Duties, responsibilities, and activities may change at any time, with or without notice.

Signatures

Employee signature below constitutes employee's understanding of the requirements, essential functions, and duties of the position.

Employee:_____   Date:_____

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Oregon Equal Pay Act

Most important take away points (Best Practice):

- Implement a consistent system for setting wages and increase wages
- Group substantially similar jobs (comparable work)
- Identify wage discrepancies between two employees with comparable character work
  - Consider attorney-client privilege
- Resolve wage discrepancies that are not objectively supported by key employee categories (objective reasons)
- Create job descriptions to support analysis
- Employers should reevaluate positions and employees (i.e., perform a pay analysis) at least every 3 years
- If you receive a claim – contact an attorney immediately!

PARITY SOFTWARE
THE PAY EQUITY SOLUTION

Questions

For more information about Parity Software's automated software solution please visit our table