



**OREGON STATE LEGISLATURE**  
**900 COURT ST NE**  
**SALEM, OR 97301**

Commissioner Val Hoyle  
Bureau of Labor and Industries  
800 NE Oregon Street, Suite 1045  
Portland, Oregon 97232

May 1, 2019

Updated: June 12, 2019

Dear Commissioner Hoyle,

On December 12, 2019 the Senate Committee on Workforce led by Chair, Senator Kathleen Taylor and Vice Chair, Senator Tim Knopp asked staff from the Bureau of Labor and Industries (BOLI) to attend an Informational Meeting to discuss the management and timing of the Rulemaking process on House Bill 2005B, the Oregon Equal Pay Act of 2017. House Bill 2005B went into effect on January 1, 2019, however, the Rules were not released until November 19, 2018, therefore stakeholders had less than two months to integrate the new Rules into their workplace practices. The Senate Committee on Workforce Meeting was held to discuss why the final Rules were delayed and why they were released just prior to the bill's effective date.

In addition, during the 2017-2018 interim, we learned from stakeholders that the Rulemaking was not just delayed, but there were also concerns that Legislative Intent was not followed throughout the process. As a result, Senate Bill 123 was drafted for the 2019 Legislative Session to correct some technical issues to address the functionality of the Equal Pay Act of 2017 and to clarify the Legislative Intent behind portions of the statutory language.

During the drafting of amendments to Senate Bill 123, it was determined that a variety of the concerns could be addressed in Rule rather than in statute. Therefore, we respectfully request BOLI to re-open Rulemaking for Oregon Administrative Rules 839-800-000 – 839-800-035.

Specific topics we request to be considered include:

- Clarify that portions of a compensation package may be unequal, so long as the total compensation package is equal;
- Clarify that compensation does not include housing supplied to agricultural and farm workers which is commonly made available and assigned based on individual worker needs including family size, and may not be distributed in a discriminatory manner;
- Include projects prevailing wage rate zones in the description of location as a bona fide factor;

- Clarify that “travel” as bona fide factor can include a payment for one-time travel, such as a travel stipend or reimbursement;
- Clarify that a worker receiving penalty pay due to schedule changes under ORS 653.455 does not constitute an unlawful wage differential;
- Clarify that regarding institutions of higher education within Oregon, a system for retention offers could qualify as a “merit system,” under this law, so long as the retention offer is not made based on biased and discriminatory assumptions about members of a protected class;
- Clarify that a qualified system that rewards grant funding or sponsored external research could qualify as a “merit system” under this law, however, a system that relied on biased and discriminatory assumptions about members of protected classes does not measure merit;
- Clarify that a bona fide factor of “education” or “experience” could include an individual who has seniority status or who has a specific specialty within a field.

As Senate Bill 123 progressed through the legislative process, we received additional feedback. As a result, we chose to remove the statutory language around holding an employee’s pay constant, as similar language already exists in Rule. This change is not intended to speak to the Legislature’s intent on the permissibility of holding an employee’s pay constant.

Please let us know if you require any additional information or context pertaining to these requests, we thank you for your thoughtful consideration and your work on behalf of all Oregonians.

With respect,



State Senator Kathleen Taylor, SD-21  
Chair,  
Senate Committee on Workforce



State Senator Tim Knopp, SD-27  
Vice Chair  
Senate Committee on Workforce