

# B-Engrossed Senate Bill 123

Ordered by the House June 14  
Including Senate Amendments dated May 6 and House Amendments dated  
June 14

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that employer is not in violation of pay equity requirements for paying different level of compensation to employee [*who is performing*] for modified work in certain circumstances.

**Provides that employer may pay employees for work of comparable character at different compensation levels on basis of certain factors contained in collective bargaining agreement.**

Provides that equal pay analysis demonstrating employer's pay practices in good faith in civil action include review of certain employer practices.

Requires court to order employer to eliminate unlawful wage differential for prevailing plaintiff and award back pay or unpaid wages as provided under state laws that provide for right of civil action against employer for violation of pay equity requirements.

Provides that evidence that employer has increased employee's pay as result of pay equity analysis may not be considered admission of liability in civil action.

## A BILL FOR AN ACT

1  
2 Relating to unlawful employment practices; amending ORS 652.210, 652.220 and 652.235.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 652.210, as amended by section 1, chapter 197, Oregon Laws 2017, is amended  
5 to read:

6 652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

7 (1) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based  
8 compensation.

9 (2) "Employee" means any individual who, otherwise than as a copartner of the employer, as an  
10 independent contractor or as a participant in a work training program administered under the state  
11 or federal assistance laws, renders personal services wholly or partly in this state to an employer  
12 who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only  
13 partly in this state, an individual is not an employee unless the contract of employment of the em-  
14 ployee has been entered into, or payments thereunder are ordinarily made or to be made, within this  
15 state.

16 (3)(a) "Employer" means any person employing one or more employees, including the State of  
17 Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-  
18 ration or entity and any of their instrumentalities organized and existing under law or charter.

19 (b) "Employer" does not include the federal government.

20 (4) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities  
21 among employees who perform work of comparable character.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (5) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual  
2 orientation, national origin, marital status, veteran status, disability or age.

3 (6) "Rate" with reference to wages means:

4 (a) The basis of compensation for services by an employee for an employer; and

5 (b) Compensation based on the time spent in the performance of the services, on the number of  
6 operations accomplished or on the quantity produced or handled.

7 (7) "Sexual orientation" has the meaning given that term in ORS 174.100.

8 **(8) "System" means a consistent and verifiable method in use at the time that a violation**  
9 **is alleged under ORS 652.220.**

10 [(8)] (9) "Unpaid wages" means the difference between the wages actually paid to an employee  
11 and the wages required under ORS 652.220 to be paid to the employee.

12 [(9)] (10) "Veteran status" means an individual is a veteran as defined in ORS 408.225.

13 [(10)] (11) "Wages" means all compensation for performance of service by an employee for an  
14 employer, whether paid by the employer or another person, or paid in cash or any medium other  
15 than cash.

16 [(11)] (12) "Working conditions" includes work environment, hours, time of day, physical sur-  
17 roundings and potential hazards encountered by an employee.

18 [(12)] (13) "Work of comparable character" means work that requires substantially similar  
19 knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless  
20 of job description or job title.

21 **SECTION 2.** ORS 652.220, as amended by section 2, chapter 197, Oregon Laws 2017, is amended  
22 to read:

23 652.220. (1) It is an unlawful employment practice under ORS chapter 659A for an employer to:

24 (a) In any manner discriminate between employees on the basis of a protected class in the pay-  
25 ment of wages or other compensation for work of comparable character.

26 (b) Pay wages or other compensation to any employee at a rate greater than that at which the  
27 employer pays wages or other compensation to employees of a protected class for work of compa-  
28 rable character.

29 (c) Screen job applicants based on current or past compensation.

30 (d) Determine compensation for a position based on current or past compensation of a prospec-  
31 tive employee. This paragraph is not intended to prevent an employer from considering the com-  
32 pensation of a current employee of the employer during a transfer, move or hire of the employee to  
33 a new position with the same employer.

34 (2) Notwithstanding subsection (1) of this section[,]:

35 **(a)** An employer may pay employees for work of comparable character at different compensation  
36 levels if all of the difference in compensation levels is based on a bona fide factor that is related  
37 to the position in question and is based on:

38 [(a) A seniority system;]

39 [(b) A merit system;]

40 [(c) A system that measures earnings by quantity or quality of production, including piece-rate  
41 work;]

42 [(d) Workplace locations;]

43 [(e) Travel, if travel is necessary and regular for the employee;]

44 [(f) Education;]

45 [(g) Training;]

1        *[(h) Experience; or]*

2        *[(i) Any combination of the factors described in this subsection, if the combination of factors ac-*  
3 *counts for the entire compensation differential.]*

4        **(A) A seniority system;**

5        **(B) A merit system;**

6        **(C) A system that measures earnings by quantity or quality of production, including**  
7 **piece-rate work;**

8        **(D) Workplace locations;**

9        **(E) Travel, if travel is necessary and regular for the employee;**

10       **(F) Education;**

11       **(G) Training;**

12       **(H) Experience; or**

13       **(I) Any combination of the factors described in this paragraph, if the combination of**  
14 **factors accounts for the entire compensation differential.**

15       **(b) An employer may pay employees for work of comparable character at different com-**  
16 **penetration levels on the basis of one or more of the factors listed in paragraph (a) of this**  
17 **subsection that are contained in a collective bargaining agreement.**

18       (3) An employer may not in any manner discriminate in the payment of wages or other com-  
19 pensation against any employee because the employee has filed a complaint under ORS 659A.820 or  
20 in a proceeding under ORS 652.210 to 652.235 or 659A.885 or has testified, or is about to testify, or  
21 because the employer believes that the employee may testify, in any investigation or proceedings  
22 pursuant to ORS 652.210 to 652.235, 659A.830 or 659A.885 or in a criminal action pursuant to ORS  
23 652.210 to 652.235.

24       (4) An employer may not reduce the compensation level of an employee to comply with the  
25 provisions of this section.

26       **(5) It is not a violation of this section for an employer to pay a different level of com-**  
27 **penetration to an employee who:**

28       **(a) Pursuant to a claim for a compensable injury under ORS chapter 656, receives wages**  
29 **for modified work; or**

30       **(b) As a result of a medical condition, is temporarily performing modified work that is:**

31       **(A) Authorized by a medical professional licensed under ORS chapter 677; or**

32       **(B) Requested by the employee and authorized by the employer in a manner that does**  
33 **not discriminate against employees on the basis of a protected class.**

34       *[(5)]* **(6)** Amounts owed to an employee because of the failure of the employer to comply with the  
35 requirements of this section are unpaid wages.

36       *[(6)]* **(7)** An employee who asserts a violation under this section may file a complaint with the  
37 Commissioner of the Bureau of Labor and Industries under ORS 659A.820, a civil action under ORS  
38 652.230 or a civil action under 659A.885.

39       *[(7)]* **(8)** An employer shall post a notice of the requirements of this section in every establish-  
40 ment where employees work. The Bureau of Labor and Industries shall make available to employers  
41 a template that meets the required notice provisions of this section.

42       **SECTION 3.** ORS 652.235 is amended to read:

43       652.235. (1) In a civil action under ORS 652.230 or 659A.885 (1) alleging a violation of ORS  
44 652.220, the employer may file a motion to disallow an award of compensatory and punitive damages.  
45 The court shall grant the motion if the employer demonstrates, by a preponderance of the evidence,

1 that the employer:

2 (a) Completed, within three years before the date that the employee filed the action, an equal-  
3 pay analysis of the employer's pay practices in good faith that *[was]*:

4 (A) **Was** reasonable in detail and in scope in light of the size of the employer; and

5 *[(B) Related to the protected class asserted by the plaintiff in the action; and]*

6 **(B) Included a review of practices designed to eliminate unlawful wage differentials; and**

7 (b) *[Eliminated the wage differentials for the plaintiff and]* Has made reasonable and substantial  
8 progress toward eliminating **unlawful** wage differentials for **the employer's employees** *[the pro-*  
9 *ected class asserted by the plaintiff]*.

10 (2) If the court grants the motion filed under this section **and the plaintiff prevails on the**  
11 **claim in the action**, the court *[may]*:

12 (a) **Shall order the employer to eliminate the unlawful wage differential for the plaintiff;**

13 (b) **Shall** award back pay **or unpaid wages as provided under ORS 652.230 or 659A.885** (1)  
14 *[only for the two-year period immediately preceding the filing of the action]*; and

15 (c) May allow the prevailing plaintiff costs and reasonable attorney fees, but may not award  
16 compensatory or punitive damages.

17 (3)(a) Evidence of an equal-pay analysis undertaken in accordance with subsection (1) of this  
18 section is inadmissible in any other proceeding.

19 **(b) Evidence that an employer has increased an employee's pay as a result of conducting**  
20 **an equal-pay analysis may not be considered as an admission of liability in a civil action al-**  
21 **leging a violation of ORS 652.220.**

22 (4) Information that an employer has not completed an equal-pay analysis may not be used as  
23 evidence of a violation of ORS 652.220 in an action under ORS 652.230 or 659A.885 alleging a vio-  
24 lation of ORS 652.220.