A-Bill For An Act
Relating To The Exemption Of Certain Bonuses From Pay Equity Requirements; Amending Ors 652.220; And Declaring An Emergency.

Be It Enacted By The People Of The State Of Oregon:

SECTION 1. ORS 652.220 is amended to read:

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

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

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

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

(d) Determine compensation for a position based on current or past compensation of a prospective employee. 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.

(2) Notwithstanding subsection (1) of this section:

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

(A) A seniority system;

(B) A merit system;

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

(D) Workplace locations;

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.

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(E) Travel, if travel is necessary and regular for the employee;
(F) Education;
(G) Training;
(H) Experience; or
(I) Any combination of the factors described in this paragraph, if the combination of factors accounts for the entire compensation differential.
(b) An employer may pay employees for work of comparable character at different compensation levels on the basis of one or more of the factors listed in paragraph (a) of this subsection that are contained in a collective bargaining agreement.

(c)(A) An employer may pay employees for work of comparable character at different compensation levels pursuant to a retention bonus, provided that:

(i) The employer does not discriminate between employees on the basis of a protected class in the payment of the bonus; and

(ii) The retention bonus paid accounts for the entire compensation differential.

(B) Nothing in this section prohibits an employer from conditioning the employee’s eligibility for a retention bonus upon a requirement that the employee work for the employer for a specified period of time that is at least 30 days.

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

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

(5) It is not a violation of this section for an employer to pay a different level of compensation to an employee who:

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

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

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

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

(6) Amounts owed to an employee because of the failure of the employer to comply with the requirements of this section are unpaid wages.

(7) An employer who asserts a violation under this section may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820, a civil action under ORS 652.230 or a civil action under 659A.885.

(8) An employer shall post a notice of the requirements of this section in every establishment where employees work. The Bureau of Labor and Industries shall make available to employers a template that meets the required notice provisions of this section.

SECTION 2. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.