



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

March 15, 2023

Senator Kayse Jama  
900 Court Street NE S409  
Salem OR 97301

Re: Senate Bill 925 and pay equity laws

Dear Senator Jama:

You asked whether the provisions of Senate Bill 925 are redundant in light of the existing laws governing pay equity. The answer is no. Both Senate Bill 925 and the pay equity laws relate to employee compensation, however, each relates to employee compensation in different ways.

Senate Bill 925

Senate Bill 925 imposes certain restrictions and obligations on employers regarding transparency and information disclosures concerning employee compensation. Specifically, section 1 (2) of SB 925 prohibits an employer from:

- Advertising an employment, promotion or transfer opportunity without disclosing in the job posting the pay range and a general description of the employment benefits associated with the opportunity;
- Failing or refusing to disclose information regarding the pay range or benefits associated with an employment, promotion or transfer opportunity not advertised in a job posting;
- Failing or refusing to disclose information regarding the pay range or benefits associated with the employment position held by the employee at specified points in time including, but not limited to, upon the request of the employee; and
- Retaliating or discriminating against an individual with respect to hiring or tenure or any other terms or conditions of employment because the individual has exercised a right protected under the section.

Additionally, SB 925 requires employers to maintain records regarding the employment history for each employee employed by the employer. The records must include the job title, salary history and employment benefits for each position held by the employee.<sup>1</sup> The employer shall maintain the records for the entire duration of the employee's employment and for at least two years following the termination of the employment relationship.<sup>2</sup>

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<sup>1</sup> Senate Bill 925, section 1 (3)(a).

<sup>2</sup> Senate Bill 925, section 1 (3)(b).

Senate Bill 925 also amends two Oregon statutes regarding unlawful hiring and recruitment practices. ORS 659A.357 prohibits employers from requesting the salary history of an applicant or from the applicant's current or former employer. ORS 659A.360 prohibits employers from excluding an applicant from an initial interview based solely on the fact that the applicant has a past criminal conviction. Senate Bill 925 expands the scope of application of these provisions to include employment agencies.

Lastly, SB 925 provides remedies for individuals alleging a violation of the job posting and disclosure requirements in the form of a private right of action and administrative remedies, including civil penalties.<sup>3</sup>

### Pay equity laws

Oregon's pay equity laws<sup>4</sup> are primarily focused on ensuring that employees are paid equal pay for equal work. ORS 652.220 (1) provides that it is an unlawful employment practice 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.

Notwithstanding those prohibitions, the equal pay provisions permit employers to pay employees at different rates of compensation only if all the difference is based on "a bona fide factor that is related to the position in question" and is based on the following:

- (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;
- (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 ORS 652.220 (2)(a), if the combination of factors accounts for the entire compensation differential.<sup>5</sup>

As can be seen from the above, the substantive provisions of SB 925 seek to regulate transparency and disclosures concerning employee compensation. Conversely, the pay equity

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<sup>3</sup> Senate Bill 925, section 1 (5) to (7).

<sup>4</sup> ORS 652.210 to 652.235.

<sup>5</sup> ORS 652.220 (2).

laws seek to equalize pay for employees who perform work of comparable character by prohibiting discriminatory compensation practices and limiting the circumstances under which an employer may justify differences in pay between employees who perform work of comparable character.

Indeed, the transparency and disclosure requirements under SB 925 might relate to pay equity insofar as the transparency practices and disclosures operate to reveal potential inequalities in employee compensation, which, in turn, could provide opportunities for an employer to address the inequalities by reviewing their pay practices. However, the transparency and disclosure requirements neither govern nor prescribe how employers must compensate employees. For these reasons, we conclude that the provisions of SB 925 and the pay equity laws are not redundant.

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Very truly yours,

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