House Bill 4050

Sponsored by Representative BOSHART DAVIS, Senators STEINER, MEEK; Representatives ELMER, LEVY E, Senators BONHAM, WOODS (Presession filed.)

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 as introduced. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act removes an exception to the state law concerning pay equity requirements. The Act changes the law to add to the list of factors that an employer can use as a reason for a pay differential. The Act becomes effective when the Governor signs it. (Flesch Readability Score: 64.3).

Provides factors upon which compensation differentials may be based for an employer to lawfully pay employees who perform work of comparable character at different compensation levels.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

Relating to compensation differentials under 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 one or more of the following factors that are related to the position in question:

(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;

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

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(H) Experience; or

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

(I) A bona fide factor:

(i) Other than an employee's protected class status;

(ii) That is consistent with a business necessity; and

(iii) That fulfills the underlying business purpose of the business necessity.

(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) An employer may not rely on the bona fide factor described in paragraph (a)(I) of this subsection to justify a compensation differential if an employee demonstrates the existence of alternative business policies or practices that would equally fulfill the same business purposes as those fulfilled by the bona fide factor, without producing a compensation differential. For purposes of this subsection, “business necessity” means an overriding legitimate business purpose.

(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 employee 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 2024 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect on its passage.