“Show Me the Money”

What You Need to Know to Comply With Pay Equity Laws

Presented by: Christine Thelen
Will Weiner
Today’s Agenda

1. Why Pay Equity Deserves Your Attention
2. Pay Equity – The Shifting Legal Landscape
3. Washington Pay Equity Protections
4. Oregon Pay Equity Protections
5. What Employers Should Do
Why Pay Equity Deserves Your Attention
### Pay Equity In Washington and Oregon

<table>
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<tr>
<th></th>
<th>All Women</th>
<th>White Women</th>
<th>Asian Women</th>
<th>Black Women</th>
<th>Latina Women</th>
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<tbody>
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<td><strong>Washington</strong></td>
<td>78.3¢</td>
<td>75.2¢</td>
<td>79.9¢</td>
<td>62.4¢</td>
<td>48¢</td>
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<tr>
<td><strong>Oregon</strong></td>
<td>81.6¢</td>
<td>78.8¢</td>
<td>83.4¢</td>
<td>66¢</td>
<td>51.3¢</td>
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</table>
Opportunity Gap

- Men are 70% more likely to be in VP or C-suite roles than women by mid-career

- Men are 142% more likely to be in VP or C-suite roles than women by late career
Why Are Organizations Prioritizing Pay Equity?

- The collective social, business and legal consciousness is changing
- Good business reasons
Pay Equity Is Good Business

- Attract better (and more diverse) talent
- Improve corporate culture and employee morale
- Retain your best employees
- Build positive relations with media and consumers
- Improve innovation and growth
Pay Equity: The Shifting Landscape
Federal Pay Equity Protections

- Equal Pay Act (1963)
- Title VII (1964)
- Pregnancy Discrimination Act (1978)
- Lilly Ledbetter Fair Pay Act (2009)
- Enhanced EEOC Activity (since 2013)
Expanding State Laws

- Original state laws date back to 1940s
- Recent enhanced state and local laws
  - Expanding comparable jobs
  - Limiting reasons for pay disparity
  - Banning salary history inquiries
  - Requiring pay transparency
  - Increasing penalties
Litigation on the Increase

- Increase in EEO enforcement suits
- Increase in litigation
  - Health, legal and technology industries
Washington's Pay Equity Protections
Washington’s Law Against Discrimination

- Prohibits employers from discriminating in compensation or other terms or conditions of employment based on sex
- Similar to Title VII, federal law
Washington Equal Opportunity Pay Act

- Based on gender only
- Requires equitable pay for "similarly employed"
- Requires equal access to "career opportunities"
Washington Equal Opportunity Pay Act

- Ban on prior salary inquiries, use and reliance
- Transparency in wages
- Damages going back 4 years
- Prohibits retaliation
What Does it Mean to Be “Similarly Employed”?

- Same employer
- Perform jobs requiring similar skill, effort, and responsibility
- Work under similar conditions
What Does it Mean to Be “Similarly Employed”? 

Skills  Responsibility  Effort  Working Conditions
Bona Fide Reasons for Pay Differentials

- Consistent with business necessity
- Not derived from gender-based differential
- Cannot rely on prior wage or salary history
- Accounts for entire pay differential
Examples of Bona Fide Reasons for Pay Differentials

- Education, training or experience
- Seniority system
- Merit system
- Earnings measured by production quantity or quality
- Regional differences in compensation and minimum wage
Washington law prohibits:

- Pattern of limiting opportunities based on gender
- Formal or informal practice limiting opportunities based on gender
- Need good faith, bona fide reason for inequity
Employers prohibited from:

- Screening candidates based on prior pay
- Seeking pay history
- Determining current compensation based on prior pay
Employer cannot retaliate for employees:

- Discussing wages – their own or others
- Asking for justification for pay rate or lack of advancement, or encouraging others to do same

- Provide wage scale or salary range to current employee changing positions
  - Provide applicant minimum wage or salary for position
Oregon's Pay Equity Protections
Oregon’s Discrimination Law

- Prohibits employers from discriminating in compensation or other terms or conditions of employment based on protected class
- Similar to Title VII, federal law
Oregon’s Equal Pay Act

- Requires equitable pay for “work of a comparable character”
  - Based on all protected classes
  - Allows pay differential for bona fide reasons
Protected Classes

• Race
• Color
• Religion
• Sex
• Sexual orientation/gender identity/gender expression
• National origin
• Marital status
• Veteran status
• Disability
• Age
Oregon’s Equal Pay Act

- Prohibits seeking, using and relying on pay history
- Requires pay transparency
- Encourages pay equity audits
- Damages going back 2 years
- Prohibits retaliation
What is Work of Comparable Character?

Substantially similar:

Knowledge
- Education/Training
- Certifications

Skills
- Experience
- Abilities
- Efficiency

Responsibility
- Supervisory Functions
- Accountability
- Autonomy
- Significance

Effort
- Mental and Physical Exertion
- Complexity

Working Conditions
- Work environment
- Work schedule
Bona Fide Reasons for Pay Differentials

- Seniority system
- Merit system
- System that measures earnings by quantity or quality of production (piece-rate)
- Education
- Training
- Experience
- Travel
- Workplace locations
Pay Equity Audit Safe Harbor

- Completed within three years before lawsuit
- Good faith analysis
- Reasonable in detail and scope
- Related to plaintiff’s protected class
- Eliminated pay differential for plaintiff
- Substantial progress eliminating pay differential for plaintiff’s protected class
Pay History Ban

Employers prohibited from:

- Screening candidates based on prior pay
- Seeking pay history
- Determining current compensation based on prior pay
What Should Employers Do?
Best Practices for Pay Equity

- Review current approach to compensation and pay decision practices
- Update policies
- Require rationale for pay decisions
- Identify jobs that involve similar work
Best Practices for Conducting a Pay Equity Audit

- Define the team and scope
- Consider privilege
- Consider retaining a consultant
- Identify jobs of comparable character
- Gather data
- Conduct analysis
- Fix pay disparities
- Establish regular rhythm
Best Practices for Complying with the Pay History Ban

- Modify job application and related forms
- Revise recruiting policies and procedures
- Train HR and hiring managers

“Without telling me what your salary is currently or has been in the past, what are your expectations regarding compensation for this position?”
Determine pay transparency philosophy
  ▪ Update handbook and policies
    ▪ Be prepared to answer inquiries
      ▪ Train HR and managers
    ▪ Train employees with access to confidential pay
Best Practices for Creating Equity in Career Advancement

- Review promotional practices and policies
- Update handbook and policies
- Assess and alter succession planning practices
- Train HR and managers
Addressing the Opportunity Gap – A Broader Approach

- Educate managers on unconscious bias
- Expand workplace flexibility
- Promote paid time off and parental leave for all employees
- Embrace and promote increased diversity
Monitor the Legal Landscape

- New/Amended federal, state and local laws and regulations
  - Court decisions and jury verdicts
    - EEOC enforcement strategies
Thank you!

Christine Thelen
503.778.2139
thelenc@lanepowell.com

Will Weiner
503.778.2168
weiner.will@lanepowell.com

Questions?
Comments?
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