Equal Pay and Opportunities Act (RCW 49.58)

Employer's Guide

This guide provides information on the Equal Pay and Opportunities Act (RCW 49.58). This guide does not constitute legal advice. When using this reference guide, please understand that it is not intended to replace policies, procedures, RCWs or WACs enforced by the Washington State Department of Labor & Industries.

Washington State Department of
Labor & Industries

This page is left intentionally blank

Contents

Chapter 1 – Overview of the law and purpose of this guide 1

Chapter 2 – Equal Pay 1

Chapter 3 – Career Advancement Opportunities 3

Chapter 4 – Wage Discussions 4

Chapter 5 – Retaliation Protections 5

Chapter 6 – Job Applicant Protections 5

Chapter 7 – Enforcement and Liability 7

Chapter 8 – Self-Evaluations 9

Chapter 9 – Policies & Practices Checklist 12

Chapter 10 – Employer Consultations 14

NOTICE

This document contains sections of the Revised Code of Washington (RCW, laws) and the Washington Administrative Code (WAC, rules) that are current as of the date shown on the back cover. Changes to laws and/or rules may occur in legislative sessions or departmental rule activities. Please research the most current language of the laws, which is available at **search.leg.wa.gov**.

Chapter 1 – Overview of the law and purpose of this guide

The Equal Pay and Opportunities Act (RCW 49.58) promotes pay equity in Washington State through equal pay, equal career advancement opportunities, open wage discussions, prohibited retaliation, and other protections for employees and job applicants.

All employers, private and public, doing business in Washington are required to comply with the Equal Pay and Opportunities Act. All employees working in Washington and job applicants seeking employment with a Washington employer are protected by the Equal Pay and Opportunities Act.

Most of the protections of the law apply to all employers. However, protections under RCW 49.58.110 regarding disclosure of wage or salary range only apply to employers with 15 or more employees. Please see Chapter 6 for more information.

This guide will provide an overview of the law and inform employers about L&I's enforcement and investigation process. This guide also will assist employers to conduct a self-evaluation and take meaningful steps towards eliminating unlawful policies and practices. Conducting these evaluations may help limit the risk of future complaints, and employers will be able to identify aspects of their policies that could be improved to prevent violations of the law. Using this guide will help employers work toward eliminating the gender gap in wages and career advancement opportunities among workers in Washington.

Chapter 2 – Equal Pay

Unequal compensation (RCW 49.58.020)

A person's gender or other protected class, which includes age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, cannot be a reason for pay differences between employees with similar jobs.

Under the law, employees are considered similarly employed if they have the same employer and the performance of their job requires similar skill, effort, responsibility, and working conditions. Job titles alone do not determine if employees are similarly employed.

L&I determines if employees are similarly employed on a case-by-case basis. This analysis requires a comparison of job requirements, job descriptions, job duties, management and supervisory responsibilities, and other job-related information.

Unequal compensation between employees may be acceptable if the difference is not based on gender or other protected class. Permissible factors for differences in pay may include:

- Differences in education, training, or experience
- Seniority
- Merit/work performance
- Compensation based on quantity or quality of production
- Regional differences in compensation
- Differences in local minimum wages

To determine whether an employer is in violation of equal pay requirements, L&I will consider the following factors:

- Whether comparable employees were similarly employed
- Whether comparable/similarly employed employees were of a different gender or other protected class

- Whether the employer compensated employees differently on the basis of gender or other protected class
- Whether the employer caused systemic gender pay discrimination through the employer's formal or informal employment policy or practice
- Whether there was a pay difference and there are no permissible job-related factors to justify the compensation difference

Employers bear the burden of proof to justify why pay differences exist.

What is included in "compensation" for purposes of the Equal Pay and Opportunities Act?

Compensation means the wages and benefits provided by an employer to an employee. Wages include, but are not limited to salaries, hourly rates, commissions, and non-discretionary bonuses. Benefits include compensation given to employees not based on performance such as gifts, medical insurance plans, retirement plans, paid time off, and discretionary bonuses.

What does "skill" mean when comparing similarly employed employees?

For purposes of comparing jobs, skill includes factors such as experience, training, education, and ability required to perform the job. It must be measured in terms of the performance requirements of a job, not in terms of the skills an employee happens to have. Skills not necessary to perform a particular job are not relevant to determining whether jobs are substantially similar.

What does "effort" mean when comparing similarly employed employees?

Effort is the amount of physical or mental exertion needed to perform a job. Factors of the job which cause mental fatigue and stress, as well as those which alleviate fatigue, should be taken into account. Effort encompasses the requirements of job as a whole.

What does "responsibility" mean when comparing similarly employed employees?

Responsibility encompasses the degree of discretion or accountability involved in performing the essential functions of the job, as well as the duties regularly required to be performed for the job. It includes factors such as the amount of supervision the employee receives, or whether the employee supervises others. It also includes the degree to which the employee is involved in decision-making, such as determining policy, procedures, purchases, investments, or other such activities.

What does "working conditions" mean when comparing similarly employed employees?

Working conditions are the environmental and other similar circumstances customarily taken into consideration in setting salary or wages. This includes factors such as the physical surroundings and hazards encountered by employees performing the job. A difference in the time of day a shift is worked is not likely to be considered different working conditions.

Can pay negotiation at time of hire be a justifiable defense for pay disparities?

No. Employers can negotiate pay during the hiring process, but if the pay offered to a new employee causes a pay difference between similarly employed employees, any difference in compensation must be based on justifiable job-related factors (not the negotiation itself). L&I recommends employers rectify any pay differences caused by pay negotiations during a hiring process in order to avoid pay disparities.

If an applicant discloses a competing job offer's salary during the hiring process, can the employer offer a higher salary to meet the competing offer?

Yes. An employer may match or exceed a competing job offer during a hiring process so long as any difference in compensation between similarly employed employees is not based on gender or other protected classes, and the pay difference can be justified by a job-related factor.

Can employers still give bonuses to individual employees (such as sign-on, retention, attendance and performance bonuses)?

Yes, so long as they are available to all employees performing similar work on an equal and non-discriminatory basis. L&I recommends having a policy or defined systems in place to outline the availability and requirements to earn such benefits.

May an employer award extra days off to an employee in recognition of productivity, going above and beyond, participation in employer events, etc.?

Yes, if the extra days off may be awarded to all employees performing similar work on an equal and non-discriminatory basis. L&I recommends having a policy or defined systems in place to outline the availability and requirements to earn such benefits.

Chapter 3 – Career Advancement Opportunities

Unequal career advancement opportunities (RCW 49.58.030)

Limiting career advancement opportunities, or providing unequal career advancement opportunities, on the basis of gender or other protected classes contributes to pay inequity and is unlawful under the law.

Unequal career advancement opportunities may be acceptable if the difference is not based on gender or other protected classes. Acceptable factors for differences in career advancement opportunities may include:

- Differences in education, training, or experience
- Seniority
- Merit/work performance
- Compensation based on quantity or quality of production

To determine whether an employer is in violation of equal career advancement opportunity requirements, L&I will consider the following factors:

- Whether the employer provided unequal career advancement opportunities based on gender or protected class
- Whether the employer committed a pattern of violations granting career advancement opportunities to employees based on a protected class
- Whether the employer caused systemic discrimination in providing career advancement opportunities based on a protected class through the use of formal or informal employment policies or practices
- Whether there were permissible job-related factors to justify differences in career advancement opportunities

Employers bear the burden of proof to justify why different career advancement opportunities are provided to employees.

Can employers offer training intended for a specific gender or other protected class?

Training intended for a specific gender or other protected class may be allowed under the law if the same training is offered to others who are similarly employed. Excluding similarly employed workers from training may violate the law if it limits their career advancement opportunities.

Chapter 4 – Wage Discussions

Prohibiting wage discussions (RCW 49.58.040)

Employers cannot prohibit employees from disclosing their wages as a condition of employment. Employers also cannot require employees to sign a non-disclosure agreement or any other document that prevents employees from disclosing their wages.

Under the law, employers cannot prohibit employees from inquiring about, disclosing, comparing, or otherwise discussing their wages with others or asking their employer about their wages or lack of career advancement opportunities.

Some examples of protected wage discussions may include:

- An employee asking their employer for a pay raise
- An employee asking their employer for the reason why they are paid at a specific rate
- An employee comparing wages with other employees
- An employee asking their employer to confirm what their pay rate is
- An employee asking for wages owed

Employers can require employees who have access to other employees' wage information as part of their job duties, such as a human resources consultant or a payroll manager, to keep that information confidential. However, these employees cannot be prohibited from disclosing their own wages and are protected from retaliation for doing so.

To determine whether an employer has violated the Equal Pay and Opportunities Act by prohibiting wage discussions, L&I will consider the following factors:

- Whether the employer prohibited the employee from inquiring about, disclosing, comparing, or otherwise discussing their wages with other employees
- Whether the employer prohibited the employee from asking about their pay or lack of career advancement opportunities
- Whether the employee was discouraged from having open wage discussions because of formal or informal employment policies or practices
- Whether the employer took an adverse action against the employee for having wage discussions
- Whether the employee was required to agree to a non-disclosure agreement that prevented them from discussing wages as a condition of employment

Can employers have non-disclosure agreements or policies for handling personal proprietary information and personnel information?

Yes, non-disclosure agreements and policies are permissible so long as they do not prohibit employees from discussing, disclosing, or comparing wages. Agreements or policies that prohibit wage discussions need to be revised to comply with the law.

If an employee is offered a severance agreement as part of their termination of employment, can the company ask the employee to keep the wage confidential?

No. A severance payment constitutes compensation. Requiring confidentiality of a severance pay agreement could be a violation of the Equal Pay and Opportunities Act if the employer requires the employee to sign a waiver or other document that prevents the employee from disclosing the amount of the employee's compensation.

Chapter 5 – Retaliation Protections

Retaliation prohibited (RCW 49.58.050)

Employers cannot retaliate, discharge, or discriminate against employees for exercising their protected rights under the law.

These protected rights include:

- Inquiring about or making a complaint with their employer (formally or informally) about an alleged violation of the law
- Communicating with any person, including coworkers, about a violation of the law
- Filing an Equal Pay and Opportunities Act complaint with L&I
- Testifying or otherwise participating in an administrative, judicial, or other investigation or proceeding regarding an alleged violation of the law
- Informing another person about that person's rights under the law

Retaliation means taking an adverse action against an employee. Prohibited adverse actions may include:

- Terminating, suspending, demoting, or denying a promotion
- Reducing an employee's hours or compensation
- Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member
- Taking any other adverse action against an employee for exercising or attempting to exercise their protected rights under the law

When determining whether an employer has retaliated against an employee, L&I will consider all of the following factors:

- Whether the employee exercised a protected right or engaged in a protected activity under the Equal Pay and Opportunities Act
- Whether the employer had knowledge of the protected activity (this does not necessarily mean the employer had knowledge of the law, it means the employer was aware of the situation or activity)
- Whether the employer retaliated or took an adverse action against the employee in connection with the employee exercising a protected right or engaging in a protected activity

Are employees protected from retaliation if an employer takes an adverse action towards them for exercising their rights under the Equal Pay and Opportunities Act?

Yes. Employees are protected from retaliation if they are exercising any of their protected rights under the law. Additionally, an employer may not retaliate, discharge, or discriminate against an employee because the employee filed a complaint or participated in any proceedings under the law on behalf of themselves or others.

Chapter 6 – Job Applicant Protections

Seeking wage and salary history of job applicants (RCW 49.58.100), effective July 28, 2019

Hiring policies and practices such as asking an applicant for their salary history or requiring a minimum previous salary to be considered for a new position can contribute to ongoing earning inequalities and are prohibited by law.

Employers cannot seek the wage or salary history of an applicant. An employer may confirm an applicant's salary after the employer negotiates and makes an offer of employment with compensation to the applicant. Employers cannot ask about job applicants' salary history in a job application, even if the question is optional. Employees can disclose their wage or salary history to prospective employers, but only if the disclosure is voluntary.

Employers cannot require that an applicant's prior wage or salary history meet certain criteria.

For example, employers cannot require that an employee made a minimum previous salary to be considered for a new position.

Disclosure of wage or salary range (RCW 49.58.110)

Employers must provide the wage scale or salary range of a new position to an employee who is offered an internal transfer or promotion, upon request by the employee. If the position pays a fixed wage instead, the employer must provide that amount.

Employers with fewer than 15 employees do not have to meet these requirements.

Pay transparency requirements in job postings (RCW 49.58.110), Effective Jan. 1, 2023

All employers, with 15 or more employees, engaging in any business, industry, profession, or activity in Washington must provide on job postings:

- Wage scale or salary range
- General description of all benefits
- General description of other compensation

The wage scale or salary range should provide applicants with the employer's most reasonable and genuinely expected compensation range for the job. The range should extend from the lowest to the highest pay established by the employer prior to posting the job, such as $60,000–$80,000 per year or $25.00–$29.00 per hour.

That range should be clear without open-ended phrases such as "$60,000 per year and up" (with no top of the range), or "up to $29.00 per hour" (with no bottom of the scale).

If the employer does not already have an existing wage scale or salary range for a position, a scale or range should be created prior to publishing the posting.

If the employer intends to use a "starting range" for an initial timeframe of employment or probationary period, the starting range may be listed on the posting but the entire scale or range must also be listed on the posting.

A posting means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants. A "posting" does not include a solicitation for recruiting job applicants that is digitally replicated and published without an employer's consent.

A "general description of all benefits" includes, but is not limited to, health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits.

All applicants, including existing employees, who apply to a posting recruiting Washington-based employees, with an employer as defined by RCW 49.58.010, including employers who may not have a physical presence or employee in Washington State, are protected by the law.

Employers must disclose a wage scale or salary range and a general description of benefits and other compensation on postings for remote work that could be performed by a Washington-based employee. An employer cannot avoid disclosing these requirements by indicating within a posting that the employer will not accept Washington applicants.

Drivers License Requirement: WAC 296-123-065

Employer's cannot require a valid driver's license as a condition of employment or include the requirement in a job posting unless driving is an essential job function or is needed for a legitimate business purpose.

What are "essential job functions"?

"Essential job functions" mean the core, fundamental tasks and duties that an employee must be able to perform to meet the requirements of their position.

Additional information is outlined in ES.E.1, Equal Pay and Opportunities Act Administrative Policy ES.E.2, Job Postings Administrative Policy, and ES.A.13, Minimum Wage Act – Washington Based Employee.

Chapter 7 – Enforcement and Liability

L&I investigation and remedies (RCW 49.58.060)

L&I is committed to provide resources to employers to assist them with being in compliance with the law, including providing recommendations to employers for conducting self-evaluations. However, if an employee believes their rights have been violated, they have the right to file a complaint with L&I and the department must investigate. The information below is provided to explain L&I's investigation and enforcement process.

Employees and job applicants who believe their rights under the Equal Pay and Opportunities Act have been violated may file a complaint with L&I. Employees and job applicants have up to four years from the date of an alleged violation of the law to file a complaint. L&I can only address alleged violations that occurred after the effective date of the law, which is June 7, 2018, for most of the Equal Pay and Opportunities Act protections. The effective date of the wage and salary information provisions in RCW 49.58.100 and RCW 49.58.110 is July 28, 2019.

L&I must review and investigate all complaints it receives to determine compliance with the law. L&I may initiate an investigation involving multiple employees when, through the course of an investigation, L&I discovers that other employees were subject to violations of the law. L&I may require the testimony of witnesses and may require the employer to provide documentation as part of an investigation.

L&I does not have to prove an employer's intent to discriminate in order to determine whether a violation of the law occurred. If a gender pay difference between similarly employed employees exists, and there are no justifiable job-related factors to account for the difference, the employer will be considered to have violated the Equal Pay and Opportunities Act.

Employers carry the burden of proof to show that a violation of the Equal Pay and Opportunities Act does not exist.

Resolving a violation:

If a violation of the Equal Pay and Opportunities Act is found, L&I must attempt to resolve the complaint through conference and conciliation.

What is the purpose of conference and conciliation?

The purpose is for L&I to try to resolve a complaint between the employer and employee without issuing a citation and notice of assessment to the employer.

The goal is to reach a resolution that is acceptable to the employee who filed the complaint, the employer they filed the complaint against, and L&I.

Are the employee and employer required to participate in conference and conciliation?

No. Participation in conference and conciliation is voluntary for the employee and employer.

If the employee or employer chooses not to participate, L&I will have satisfied the requirement to try to resolve the complaint through conference and conciliation and L&I will determine if a citation and notice of assessment will be issued.

Who participates in the conference and conciliation process?

L&I selects a facilitator. This could be the industrial relations agent assigned to investigate the complaint, the equal pay specialist, or another person either at L&I or outside the agency.

The employee and the employer are the participants in the conference and conciliation process. Both parties should understand the purpose of conference and conciliation and must

have the authority to enter into an agreement about the complaint.

If either party wishes to have a lawyer or third party present at the conference and conciliation, they must inform the facilitator before conference and conciliation begins.

How does the conference and conciliation process work?

L&I will provide the employer with information about the factual and legal basis for the alleged violations and give the employer an opportunity to discuss and resolve the complaint.

During conference and conciliation, the participants can discuss the complaint and alleged violations, exchange information and views, and propose possible resolutions and counter-offers.

Conference and conciliation can take place in face-to-face meetings, video conferencing, telephone meetings, or through an exchange of letters, emails, or conversations with the facilitator. Negotiations between the employee and the employer may happen together or separately with the facilitator acting as the go-between. Conference and conciliation may take place on one day or over the course of a period of time.

Facilitators do not make recommendations to either party but may provide information about how other complaints have been resolved and may propose possible resolutions for the employee and employer to consider. Facilitators may also provide information about the law and how it applies to the complaint.

If L&I determines that further conference and conciliation efforts would be unsuccessful or non-productive, L&I can end the process and resolve the complaint through an official determination.

What are the possible outcomes of conference and conciliation?

Possible resolutions may include paying back wages owed, providing career advancement opportunities, changing company policies, job reinstatement, or other proposed resolutions.

Resolution through abatement: If the parties reach a resolution through conference and conciliation, and the employer complies with the terms of the resolution by the agreed deadline, L&I will not issue a citation and notice of assessment, and will close the complaint as resolved.

Resolution through L&I determinations: If the parties do not reach a resolution, or the parties reach a resolution but the employer does not comply with the terms of the resolution by the agreed deadline, L&I will make an official determination:

- **Resolution – Citation and notice of assessment:** If L&I determines a violation has occurred, L&I may issue a citation and notice of assessment. L&I may order payment of damages to the employee plus 1% interest per month. L&I may also order payment of a penalty payable to L&I of up to $500 for a first violation and up to $1,000 or 10% of damages for repeat violations.
- **Resolution – Notice of Finding:** If L&I determines violations did not occur, L&I will send a written notice of finding to the parties and close the investigation.

Civil Action (RCW 49.58.070)

An employee can file a complaint with L&I for violations of the Equal Pay and Opportunities Act or bring a civil action against an employer for damages, interest, statutory penalties, costs, and reasonable attorney fees. If a civil claim is filed in court, L&I cannot investigate the complaint.

An employee has three years from the date of the alleged violation to bring a civil action against their employer. Violations must have occurred after the effective date of the law, which is June 7, 2018 for most of the Equal Pay and Opportunities Act. The effective date of the wage and salary information provisions in RCW 49.58.100 and RCW 49.58.110 is July 28, 2019.

Chapter 8 – Self-Evaluations

Below are steps employers should consider taking as part of a comprehensive self-evaluation. L&I recommends employers conduct a self-evaluation of their company annually to ensure ongoing compliance with the law. However, the complexity of the analysis will vary significantly depending on the size, make up, and resources of each employer. The steps outlined below are intended only as general guidelines to help employers assess their compliance with pay equity among genders.

Step 1: Gather relevant information

Gather data and other information necessary to perform a thorough self-evaluation. Such information likely includes, but is not necessarily limited to, the following information for each current and former employee for the past year:

- Name/employee identification
- Gender
- Primary work location
- Position/classification (full-time, part-time, temporary, etc.)
- Exempt/non-exempt status
- Date(s) of hire
- Job title
- Job code/grade/band
- Date in most recent job code/grade/band
- Division/department/business unit
- Supervisor
- Performance ratings
- Highest level of education/training
- Special licenses, certifications, etc.
- Special job-related skills, such as bilingual skills
- Pay type (salary, hourly, etc.)
- Annualized salary or hourly rate
- Shift differential
- Bonus eligibility
- Eligible benefit plans/programs
- Bonus paid
- Hours worked/type (regular, overtime, etc.)
- Total compensation, including wages and benefits
- Job duties performed
- Years of relevant experience

Additional information also may be relevant depending on a particular employer's compensation policies and practices. For example, if an employer takes job-related training, individual production, or sales into account in determining employee compensation, that information would be relevant to the self-evaluation.

Step 2: Identify comparable jobs

Identify which positions in the organization are comparable. Create job groupings based on the skill, effort, and responsibility required to perform the job. This analysis requires a comparison of job requirements, job descriptions, job duties, management and supervisory responsibilities, and other job-related information.

In your self-evaluation, you should also consider working conditions, such as the physical surroundings, hazards encountered, and the time of day when the work is performed. While job titles and descriptions may be useful, these alone do not determine comparability. Employers should not assume that jobs in different business units or departments are not comparable – they may in fact require similar skill, effort, and responsibility.

Step 3: Calculate whether employees of different protected classes are paid equally

Within each comparable job grouping, calculate whether similarly employed employees of different protected classes are compensated equally. This calculation and evaluation will vary from employer to employer.

The following are intended only as general guidelines and should be used only as a starting point for determining whether

employees performing comparable work are paid equally. Alternative approaches based on valid methodologies used or recommended by professional economists or statisticians, for example, may be useful.

- For an organization with small, clearly-defined groupings of comparable jobs and relatively simple pay structures, a simple analysis comparing the average wages earned by all protected classes of similarly employed employees working in comparable jobs may be sufficient to identify where there are disparities.
- When the number of employees in a particular grouping of comparable jobs exceeds 30 or the pay structure is complex, a more detailed analysis is likely necessary. In many cases, conducting a statistical analysis will be the best way for employers to determine whether there are differences in pay between protected classes in comparable jobs after considering other factors. Statistical analysis will assist to identify trends through sampling of source records for each group of comparable jobs.
- Employers should also give special consideration to outliers — employees whose compensation is significantly above or below the average. Employers should determine whether these employees should be included in the overall analysis of a particular job grouping and whether they are being paid in compliance with the law.
- Employers should also consider conducting side-by-side comparisons of employees from different protected classes within the same comparable job grouping to determine whether there are lawful reasons for paying employees within the same comparable job grouping differently. As an example, for purposes of complying with the law, each male employee within a comparable job grouping is a potential comparison for the female employees (and vice versa). It is not sufficient, therefore, to compare a female employee only to the "average" male employee performing comparable work.

Employers should consult with legal counsel about their options and what type of analysis is most appropriate for their organization.

Step 4: Assess whether differences in pay are justified under the law

If your analysis identifies any pay differential(s) based on protected class, determine whether the differential can be explained by one (or more) of the following permissible factors:

- Differences in education, training, or experience qualifications
- Seniority
- Merit/work performance
- Compensation based on quantity or quality of production
- Regional differences in compensation
- Differences in local minimum wages

For smaller comparable job groupings (those with up to 30 employees), employers should look at similarly employed employees within each group to assess whether any differentials in pay are justified by these permissible factors. Such employers may be able to conduct this analysis themselves.

Employers may use the Equal Pay Calculation Tool (click on the EPOA Employer Resources link at **Lni.wa.gov/EqualPay**) offered by L&I to conduct a self-evaluation to determine if they are paying similarly employed employees differently. This tool is not required – it is solely intended to assist in the evaluation of comparable job groupings that have 30 or fewer employees with a relatively simple pay structure.

This tool will not give employers a definitive determination on whether they are in compliance with the law, but will assist them in gathering and analyzing relevant information. Ultimately, determinations are made on a case-by-case basis during the course of an investigation. Therefore, the scope and detail of the analysis required will vary significantly depending on the size, make-up, and resources of each employer. Employers may opt to develop an alternative method of analysis depending on the needs of their organization.

For larger comparable job groupings, a different analysis method may be most appropriate to determine whether there are any pay differentials based on protected class that are not justified. It is important to note that there are many different methods to conduct an equal pay analysis. As an employer auditing your own records to confirm whether there is a pay difference, you may need to select the approach that is appropriate for your organization. Additionally, employers should be mindful of outliers—employees whose compensation is significantly above or below that of others performing comparable work—and determine whether paying those employees more or less is defensible under the law.

Step 5: Correcting any pay differentials based on protected class

Employers are recommended to take proactive steps to correct, in a timely fashion, any pay differentials between employees of different protected classes performing comparable work that are not justified by one or more of the permissible factors listed in the law. In most cases where correction is necessary, pay adjustments are recommended for some or all employees within a comparable job group.

L&I recommends employees who are not compensated highly enough be brought up to the appropriate salary level.

Employers should develop and implement a remedial plan as soon as possible upon completion of the self-evaluation.

If a complaint is filed against an employer and L&I finds that the complainant was subject to a violation of equal pay requirements, L&I may require the employer to compensate the complainant for the lost wages.

Step 6: Adjust pay practices

Employers who identify unjustified pay differentials between similarly employed employees of different protected classes performing comparable work should attempt to determine the reason(s) for such differentials—e.g., supervisor discretion, starting salaries, raises over time, etc.—and take steps to prevent pay differentials in the future. These steps may include:

- Implementing objective standards for setting starting salaries, pay ranges, or hourly rates, and for applying raises and other adjustments
- Making changes to job titles, descriptions, codes/bands/grades, etc. in order to better align job groupings of similarly employed employees
- Conducting a self-evaluation on a regular basis (e.g., annually) to ensure that disparities do not recur over time

Chapter 9 – Policies & Practices Checklist

This checklist is intended to guide employers in conducting a review of their existing policies and practices for compliance with the Equal Pay and Opportunities Act, including pay equity among genders. This checklist is provided for informational purposes only.

Policies & Practices Checklist	
1. Do you have an employment application form (either on paper or online) that requests salary history, including, for example, an applicant's current salary? ■ The law prohibits seeking wage or salary history information from job applicants. All application forms should be revised to eliminate any request for this information, even if the question is optional.	☐ Yes ☐ No
2. Do you have a policy or practice of seeking salary history from job applicants during interviews or at other points during the hiring process? ■ Employers should review all training manuals or other guides and revise them to remove any reference to such inquiries before an offer of employment with compensation is made. ■ In addition, all employees with hiring and interviewing responsibilities should receive training on the requirements of the law.	☐ Yes ☐ No
3. Do you have a policy or practice of taking an employee's wage or salary history into account in setting starting compensation? ■ The law makes clear that an employee's wage or salary history will not be considered a valid basis for paying the employee less than an employee of a different protected class performing comparable work. Employers should revise any compensation practice that is based on past compensation.	☐ Yes ☐ No
4. Do you have a policy or practice that requires an applicant's prior wage or salary history to meet certain criteria? ■ Employers cannot require that an applicant's prior wage or salary history meet certain criteria. For example, employers cannot require that an employee made a minimum previous salary to be considered for a new position.	☐ Yes ☐ No
5. Do you have a policy or practice of prohibiting employees from inquiring about, discussing, or disclosing wage information? ■ Employers should review all employee handbooks and policies, applications, offer letters, nondisclosure agreements, and other similar documents to ensure there are no provisions that prohibit employees from inquiring about, discussing or disclosing information about either their own wages, or about other employees' wages. L&I recommends informing employees about the protections under the law related to wage discussions. ■ Employers should train all managers, supervisors, payroll and human resources employees on the requirements of the law and the appropriate response to such inquiries. ■ Employers should identify all employees who will not be permitted to discuss other employees' wages because their job responsibilities require or allow access to such information, and ensure those employees understand the restrictions that apply to their circumstances.	☐ Yes ☐ No

Policies & Practices Checklist	
6. Do you have job titles and written descriptions for each position within your organization? ■ Job titles do not determine whether employees are similarly employed. ■ While the law does not require that you have job titles and written descriptions, they may—if drafted appropriately—be a useful tool in assessing which positions are comparable. Such descriptions should take into account the skill, effort and responsibility required for each position, as well as the working conditions under in which each position is performed.	☐ Yes ☐ No
7. Do you have a plan or policy that rewards an employee's length of service? ■ Employers should review policies and practices to ensure that any seniority system is applied in the same manner to those who take leave for family and medical leave reasons (leave due to a pregnancy-related condition or statutorily protected parental, family, or medical leave) as it is to those who take leave for non-FMLA reasons. Any such system should be applied in a uniform, gender-neutral manner.	☐ Yes ☐ No
8. Do you have a compensation plan or policy that provides for differences in employee pay, including bonuses or other incentives, based upon performance or merit ratings? ■ Any merit system should be based upon employee performance as measured against uniformly reviewed, legitimate, job-related criteria that are independent of factors based on protected class. Employers using such a system should conduct regular employee evaluations or reviews.	☐ Yes ☐ No
9. Do you have a plan or policy that determines how you pay employees based on the quantity or quality of production, sales, or revenue? ■ A system that measures earnings by quantity or quality of production, sales, or revenue should quantify these factors and compensate for them in a uniform, objective, and neutral fashion. Employers should institute these elements in any such system and ensure compensation decisions are made in accordance with that system.	☐ Yes ☐ No
10. Do you pay employees performing comparable work differently based upon their geographic work locations? ■ Geographic location or regional difference is a permissible basis for pay differentials, provided that the reason for pay differentials in these locations correspond with meaningfully different costs of living or differences in the relevant labor market from one geographic location to another. Employers should consider reviewing geographic pay differentials and conducting relevant research to ensure such differentials are consistent with this standard.	☐ Yes ☐ No
11. Do you have a policy or practice that states employees will be disciplined for complaining about protected class pay disparities, career advancement opportunities based on protected class or any other protection under the Equal Pay and Opportunities Act? ■ The law prohibits employers from retaliating, discharging, discriminating, or otherwise taking an adverse action against an employee for exercising rights under the law on behalf of themselves or others. ■ Employers should review all employee handbooks and policies, nondisclosure agreements, and other similar documents to ensure there are no provisions in violation of retaliation protections under the law	☐ Yes ☐ No

Additional Recommended Best Practices

In addition to being in compliance with the law, employers are encouraged to adopt additional employment policies and best practices to encourage protected class pay equity, including:

- Defined policies or systems for specific bases for pay and career advancement differentials. Transparent compensation systems and standard metrics of recruitment, performance, advancement, and compensation will help ensure these systems are applied equitably
- Standard pay ranges or guidelines for each position or job classification
- Job descriptions that accurately reflect the work being done by employees
- Standards for salaries offered during the hiring process

L&I encourages employers to maintain good recordkeeping practices in order to respond to potential complaints. Any legitimate business reasons for disparities should be well-documented.

Chapter 10 – Employer Consultations

Equal Pay and Opportunities Act Employer Consultations

L&I offers free, voluntary consultations to help employers understand the law, identify potential risks, and improve compliance. These consultations are educational, and L&I does not issue penalties or fines if violations are found during the consultation as long as there are no active EPOA complaints against your organization.

EPOA consultation benefits

- No penalties or assessments will be issued if potential violations are identified, so long as there are no EPOA complaints filed against you during the course of the consultation.
- You will receive guidance and recommendations to comply with EPOA requirements and to prevent protected class pay discrimination, including best practices for promoting equal pay, equal career advancement opportunities, and lawful hiring practices.
- You will learn how to add clarity and transparency to your policies and practices regarding EPOA protections.
- You can reduce potential risks of employees filing EPOA complaints.

What L&I will do during a consultation

- Review your employee handbook, policies, job applications, offer letters, nondisclosure agreements, and other similar documents
- Identify potential risks
- Explain EPOA requirements and protections
- Recommend revisions to policies and practices

If potential risks or violations are found, possible resolutions for you to consider may include revising employer policies; training managers, supervisors, payroll, and human resources employees; correcting hiring practices; or adjusting pay rates.

EPOA consultations are educational and do not replace legal advice from an attorney. Guidance provided in an EPOA consultation is based on information provided by the employer and does not guarantee a business will not be found in violation of EPOA requirements if later circumstances change or additional facts are presented in an investigation.

To participate in a voluntary consultation, please contact L&I's equal pay specialist:

Call: 1-866-219-7321

Email: esgeneral@Lni.wa.gov

Other resources:

Equal Pay and Opportunities Act Employer Consultations Fact Sheet:
Lni.wa.gov/go/F700-201-909

Equal Pay and Opportunities Act Employee Rights Poster: **Lni.wa.gov/go/F700-214-000**

Equal Pay and Opportunities Act webpage:
Lni.wa.gov/EqualPay

RCW 49.58:
apps.leg.wa.gov/RCW/default.aspx?Cite=49.58

WAC 296-123:
apps.leg.wa.gov/wac/default.aspx?cite=296-123

Equal Pay and Opportunities Act Administrative Policy ES.E.1:
Lni.wa.gov/workers-rights/_docs/ese1.pdf

You can find the Equal Pay Calculation Tool and instructions on the EPOA Employer Resources web page at **Lni.wa.gov/workers-rights/wages/equal-pay-opportunities-act/epoa-employer-resources**.

Upon request, language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 711. L&I is an equal opportunity employer.

PUBLICATION F700-216-000 [09-2026]