

July 10, 2019

TO: Executive Branch Supervisors and Human Resources Staff

FROM: OFM State Human Resources

SUBJECT: Equal Pay and Opportunities Act salary-setting guidance (HB 1696)

On May 9, Gov. Inslee signed House Bill 1696, which adds sections to the state's Equal Pay Act as revised in 2018 by the Equal Pay Opportunity Act (EPOA).

His approval follows a trend in public and private organizations to adopt rules and policies that prohibit the use of prior pay information to set compensation for internal and external applicants, which may perpetuate salary disparities between men and women. Salary disparities may also occur for other protected classes, e.g. race, color, age, or national origin.

Beginning, July 28, 2019, the following prohibitions and requirements will take effect:

- 1. Employers may not seek the wage/salary history of an applicant, either from the applicant or their current or former employer, except as allowed in #3, below.
- 2. Employers may not require applicants' prior wage/salary to meet certain criteria, e.g. meet a certain level or threshold.
- 3. To facilitate the employment process, employers may confirm an applicant's wage or salary history only (1) if the applicant has voluntarily disclosed their wage or salary history, or (2) after the employer has negotiated and made a job offer, including the amount of compensation, to the applicant.
- 4. Post offer, employers must provide the minimum wage or salary for the position for which the applicant is applying (upon applicant's request). Upon request of an employee offered an internal transfer to a new position/promotion/ demotion/transfer, the employer must provide the wage scale or salary range for the employee's new position.
 - o If no wage scale or salary range exists, the employer must provide the minimum wage or salary expectation set by the employer prior to posting the position, making a position transfer, or making the promotion.

In addition to the new requirements now in law, OFM recommends that you:

- **Do not** seek an applicant's or candidate's salary expectations, as well as wage or salary history. This practice may further perpetuate pay disparities between men and women, and other protected classes.
- Include wage/salary minimum, full pay range or salary expectations set by the employer on job postings.
- Determine and document equitable wage/salary offers for candidates vs. existing staff performing similar work in relation to acceptable reasons for pay differences (as mentioned in the EPOA).
- If prior wage/salary confirmation is necessary for your processes, e.g. confirming current step for rules of promotion, ONLY confirm wage/salary histories after candidate voluntarily discloses, or accepts an offer.
- Destroy or redact any "in process" application data containing wage/salary history on or before July 28th, and ask applicants to re-apply (if necessary). Change agency-created forms as needed.

Please refer to Page 2 of this document for additional salary-setting guidance for Washington General Service, Washington Management Service and exempt positions. For more information, contact your agency's Human Resources staff.

Equal Pay & Opportunity Act salary - Compensation Guidance (HB 1696)

If applicant/candidate voluntarily discloses their current wage/salary during recruiting process, the employer may confirm **START** Candidate current WA state gov't -Candidate current employee and -Candidate new to WA state gov't -Applying to **WGS** position state gov't employment and Law prohibits employer NO-NOemployee and from seeking applicants' -Applying to WGS, WMS, or -Applying to WMS or and candidates' **EXEMPT** position? If the applicant has voluntarily disclosed **EXEMPT** position? wage/salary history their current wage: information. Supervisor makes offer with wage rate/salary based on rules of promotion. YES YES Post offer: Candidate can If the applicant has NOT voluntarily request range if not posted. disclosed their current wage: C1 Supervisor & HR Supervisor extends offer with applicable OFM recommends you: rule of promotion with a raise Supervisor and HR determine equitable wage/salary for candidate (within · Include the minimum percentage or step increase rather than established range) in relation to: an offer of a specific dollar amount. pay range or full pay range, or salary candidate's qualifications expectation set by internal equity employer (if no range budget constraints, etc. exists). Include language "Wage/salary C1a. For filling WMS/EXEMPT positions, OFM suggests agencies determine an equitable rate depends on or "zone" within the established range/band for use in wage/salary negotiations. qualifications or rules of If not initially posted, candidate may promotion" (if request pay range minimum or salary applicable). expectations set by employer (if no range exists) at the post-offer stage. C2 Supervisor Do not seek wage/salary history. Supervisor makes offer and negotiates post-offer (as needed) · Do not seek wage Supervisor may confirm candidate's wage/salary post-offer expectations.

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Candidate accepts offer or declines

C2a. OFM suggests supervisor wait on post-offer confirmation of wage/salary until after

supervisor and candidate agree on offer.