

Chapter 49.58 RCW
WASHINGTON EQUAL PAY AND OPPORTUNITIES ACT
(Formerly: Wages—Advancement Opportunities)

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RCW 49.58.005 Findings—Intent. (1) The legislature finds that despite existing equal pay laws, there continues to be a gap in wages and advancement opportunities among workers in Washington, especially women. Income disparities limit the ability of women to provide for their families, leading to higher rates of poverty among women and children. The legislature finds that in order to promote fairness among workers, employees must be compensated equitably. Further, policies that encourage retaliation or discipline towards workers who discuss or inquire about compensation prevent workers from moving forward.

(2) The legislature intends to update the existing Washington state equal pay act, not modified since 1943, to address income disparities, employer discrimination, and retaliation practices, and to reflect the equal status of all workers in Washington state.

(3) The legislature finds that:

(a) The long-held business practice of inquiring about salary history has contributed to persistent earning inequalities;

(b) Historically, women have been offered lower initial pay than men for the same jobs even where their levels of education and experience are the same or comparable; and

(c) Lower starting salaries translate into lower pay, less family income, and more children and families in poverty.

(4) The legislature therefore intends to follow multiple other states and take the additional step towards gender equality by prohibiting an employer from seeking the wage or salary history of an applicant for employment in certain circumstances. Further, the legislature intends to require an employer to provide wage and salary information to applicants and employees. [2019 c 345 § 1; 2018 c 116 § 1.]

Short title—2019 c 345: "This chapter may be known and cited as the Washington equal pay and opportunities act." [2019 c 345 § 5.]

RCW 49.58.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Compensation" means discretionary and nondiscretionary wages and benefits provided by an employer to an employee as a result of the employment relationship.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries, or the director's designated representative.

(4) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. [2018 c 116 § 2.]

RCW 49.58.020 Wage discrimination due to gender prohibited—

Penalty—Civil recovery. (1) Any employer in this state who discriminates in any way in providing compensation based on gender between similarly employed employees of the employer is guilty of a misdemeanor. If any employee receives less compensation because of discrimination on account of gender in violation of this section, that employee is entitled to the remedies in RCW 49.58.060 and 49.58.070. In such action, however, the employer shall be credited with any compensation which has been paid to the employee upon account.

(2) For purposes of this section, employees are similarly employed if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

(3) (a) Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

(i) Are consistent with business necessity;

(ii) Are not based on or derived from a gender-based differential; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system;

(iv) A system that measures earnings by quantity or quality of production; or

(v) A bona fide regional difference in compensation levels.

(c) A differential in compensation based in good faith on a local government ordinance providing for a minimum wage different from state law does not constitute discrimination under this section.

(d) An individual's previous wage or salary history is not a defense under this section.

(e) The employer carries the burden of proof on these defenses. [2018 c 116 § 3; 1943 c 254 § 1; Rem. Supp. 1943 § 7636-1. Formerly RCW 49.12.175, 49.12.210.]

RCW 49.58.030 Finding—When career advancement limited by gender —Remedies—Complaint—Penalties.

(1) The legislature finds that equality of opportunity for advancement is key to reducing income disparities based on gender. The legislature further finds that using gender as a factor in advancement contributes to pay inequity.

(2) An employer may not, on the basis of gender, limit or deprive an employee of career advancement opportunities that would otherwise be available.

(3) A differential in career advancement based on a bona fide job-related factor or factors that meet the criteria in RCW 49.58.020(3)(a)(i) through (iii) does not constitute discrimination within the meaning of this section. Such bona fide factors include, but are not limited to, the factors specified in RCW 49.58.020(3)(b)(i) through (iv).

(4)(a) If it is determined that an employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the employee is entitled to the remedies in this section and in RCW 49.58.070.

(b) Upon complaint by an employee, the director must investigate to determine if there has been compliance with this section and the rules adopted to implement this section. The director, upon complaint, may also initiate an investigation on behalf of one or more employees for a violation of this section and the rules adopted to implement this section. The director may require the testimony of witnesses and production of documents as part of an investigation.

(c) If the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(d) If no agreement is reached to resolve the violation and the director determines that the employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the director may issue a citation and notice of assessment and order:

(i) The employer to pay to the employee actual damages, statutory damages equal to the actual damages or five thousand dollars, whichever is greater, and interest of one percent per month on all compensation owed;

(ii) The employer to pay to the department the costs of investigation and enforcement; and

(iii) Any other appropriate relief.

(e) In addition to the citation and notice of assessment, if the director determines that the employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer

policy or practice, the director may order payment to the department of a civil penalty. The violation as to each affected employee constitutes a separate violation.

(i) For a first violation, the civil penalty may not exceed five hundred dollars.

(ii) For a repeat violation, the civil penalty may not exceed one thousand dollars or ten percent of the damages, whichever is greater.

(f) RCW 49.58.060 (3), (4), and (5) applies to this section. [2018 c 116 § 4.]

RCW 49.58.040 Certain employer conduct prohibited—Employee not required to disclose compensation. (1) An employer may not:

(a) Require nondisclosure by an employee of his or her wages as a condition of employment; or

(b) Require an employee to sign a waiver or other document that prevents the employee from disclosing the amount of the employee's wages.

(2) An employer may not discharge or in any other manner retaliate against an employee for:

(a) Inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee;

(b) Asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement; or

(c) Aiding or encouraging an employee to exercise his or her rights under this section.

(3) An employer may prohibit an employee who has access to compensation information of other employees or applicants as part of such employee's essential job functions from disclosing the wages of the other employees or applicants to individuals who do not otherwise have access to such information, unless the disclosure is in response to a complaint or charge, in furtherance of an investigation, or consistent with the employer's legal duty to provide the information and the disclosure is part of the employee's essential job functions. An employee described in this subsection otherwise has the protections of this section, including to disclose the employee's wages without retaliation.

(4) This section does not require an employee to disclose the employee's compensation.

(5) This section does not permit an employee to violate the requirements in chapter 49.17 RCW and rules adopted under that chapter. [2018 c 116 § 5.]

RCW 49.58.050 Employer retaliation prohibited. An employer may not retaliate, discharge, or otherwise discriminate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter. [2018 c 116 § 6.]

RCW 49.58.060 Complaint by employee—Investigation by director—Resolving the violation—Penalties. (1) Upon complaint by an employee, the director must investigate to determine if there has been

compliance with RCW 49.58.020, 49.58.040, and 49.58.050, and the rules adopted under this chapter. The director, upon complaint, may also initiate an investigation on behalf of one or more employees for a violation of RCW 49.58.020, 49.58.040, and 49.58.050, and the rules adopted under this chapter. The director may require the testimony of witnesses and production of documents as part of an investigation.

(2) If the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(a) If no agreement is reached to resolve the violation, the director may issue a citation and notice of assessment and order the employer to pay to the complainant actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; payment to the department of the costs of investigation and enforcement; and any other appropriate relief.

(b) In addition to the citation and notice of assessment, the director may order payment to the department of a civil penalty. For purposes of a civil penalty for violation of RCW 49.58.020 and 49.58.050, the violation as to each affected employee constitutes a separate violation.

(i) For a first violation, the civil penalty may not exceed five hundred dollars.

(ii) For a repeat violation, the civil penalty may not exceed one thousand dollars or ten percent of the damages, whichever is greater.

(3) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW. An employee who prevails is entitled to costs and reasonable attorneys' fees.

(4) The department must deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(5) Any wages and interest owed must be calculated from four years from the last violation before the complaint. [2018 c 116 § 7.]

RCW 49.58.070 Employee may bring civil action—Damages and relief. (1) Subject to subsection (2) of this section, an employee may bring a civil action against an employer for violation of RCW 49.58.020 and 49.58.030 through 49.58.050 for actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; and costs and reasonable attorneys' fees. The court may also order reinstatement and injunctive relief. The employee must bring a civil action within three years of the date of the alleged violation of this chapter regardless of whether the employee pursued an administrative complaint. Filing a civil action under this chapter shall terminate the director's processing of the complaint under RCW 49.58.030 or 49.58.060. Recovery of any wages and interest owed must be calculated from four years from the last violation prior to the date of filing the civil action.

(2) An employee alleging a violation of RCW 49.58.030 is entitled to relief only if the court determines that the employer committed a pattern of violations as to the employee or committed a violation through application of a formal or informal employer policy or practice. [2018 c 116 § 8.]

RCW 49.58.080 Violation of chapter—Adoption of discriminatory compensation decision or other practice. A violation of this chapter occurs when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice. [2018 c 116 § 9.]

RCW 49.58.090 Rules. The department may adopt rules to implement RCW 49.58.005 and 49.58.020 through 49.58.060. [2018 c 116 § 11.]

RCW 49.58.100 Employer seeking wage and salary history of applicants prohibited—Remedies. (1) An employer may not:

(a) Seek the wage or salary history of an applicant for employment from the applicant or a current or former employer; or
(b) Require that an applicant's prior wage or salary history meet certain criteria, except as provided in subsection (2) of this section.

(2) An employer may confirm an applicant's wage or salary history:

(a) If the applicant has voluntarily disclosed the applicant's wage or salary history; or

(b) After the employer has negotiated and made an offer of employment with compensation to the applicant.

(3) An individual is entitled to the remedies in RCW 49.58.060 and 49.58.070 for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee. [2019 c 345 § 2.]

Short title—2019 c 345: See note following RCW 49.58.005.

RCW 49.58.110 Disclosure of wage or salary range by employer—When required—Remedies. (1) The employer must disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. For the purposes of this section, "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.

(2) Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee's new position.

(3) This section only applies to employers with 15 or more employees.

(4) A job applicant or an employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee. [2022 c 242 § 1; 2019 c 345 § 3.]

Effective date—2022 c 242: "This act takes effect January 1, 2023." [2022 c 242 § 2.]

Short title—2019 c 345: See note following RCW 49.58.005.