



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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**TITLE: EQUAL PAY AND OPPORTUNITIES ACT**

**NUMBER: ES.E.1**

**CHAPTER: RCW 49.58**

**ISSUED: 6/30/2022**

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#### ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

This policy provides guidance on the Equal Pay and Opportunities Act ([RCW 49.58](#)). The Equal Pay and Opportunities Act prohibits gender pay discrimination and promotes fairness among workers by addressing business practices that contribute to income disparities between genders. Both employees and applicants have rights under this law. Most employers must also provide wage and salary information to job applicants.

#### **1. Employee and Job Applicant Rights Under the Equal Pay and Opportunities Act**

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.

The Equal Pay and Opportunities Act defines an “employee” as an employee who is employed in the business of the employee’s employer whether by way of manual labor or otherwise. This also includes employees who are exempt under the Minimum Wage Act, see [RCW 49.46](#).

The Equal Pay and Opportunities Act defines an “employer” as 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.

The department has authority to investigate complaints filed by employees and job applicants and enforce their rights under the Equal Pay and Opportunities Act.

### **1.1 Equal Pay**

Employers must provide equal compensation to “similarly employed” workers, except for some specific reasons unrelated to gender.

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. See [RCW 49.58.020](#).

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

### **1.2 Equal Career Advancement Opportunities**

Employers must not limit or provide career advancement opportunities to their employees on the basis of gender. See [RCW 49.58.030](#).

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

### **1.3 Open Wage Discussions**

Employers cannot prohibit employees from inquiring about, disclosing, comparing, or discussing their wages, including pay and benefits, with others or require employees to sign agreements that prevent them from discussing their wages. See [RCW 49.58.040](#).

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

### **1.4 Protections from discrimination and retaliation**

Employers cannot take any adverse action against an employee for discussing wages, filing a complaint, or exercising other protected rights granted under the Equal Pay and Opportunities Act. See [RCW 49.58.050](#).

Protected rights under the law include:

- Inquiring about or making a complaint with their employer (formally or informally) about an alleged violation of the law
- Open wage discussions
- 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
- Inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee

Prohibited retaliatory or adverse actions may include, but are not limited to:

- 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

### **1.5 Wage and Salary History Protections For Applicants**

Employers cannot seek the wage or salary history of an applicant or 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. See [RCW 49.58.100](#).

An employer may confirm an applicant's salary history 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 choose to disclose their wage or salary history to prospective employers, but only if the disclosure is voluntary.

## **2. Pay Transparency Requirements**

Beginning January 1, 2023, most employers must disclose in each posting for each job opening the wage scale or salary range, and a general description of all the benefits and other compensation to be offered to the hired applicant. See [RCW 49.58.110](#).

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.

Employers must provide an employee who is offered an internal transfer or promotion with the wage scale or salary range of their new position, if they request that information.

### 3. Which employers must disclose wage and salary information to applicants?

All employers as defined in [RCW 49.58.010](#) with 15 or more employees, which includes employers who may or may not have a physical presence or employee in Washington State, are required to disclose wage and salary information to applicants on job postings. “15 or more employees” can also include employees who are not Washington-based as described in Administrative Policy [ES.A.13, “Minimum Wage Act- Washington Based Employee.”](#) See Section 1 of this policy for a full description of “employer”.

### 4. Who is considered an applicant under the Equal Pay and Opportunities Act?

All applicants seeking employment with an employer as defined by [RCW 49.58.010](#), which includes employers who may or may not have a physical presence or employee in Washington State, are protected by the law. See Section 1 of this policy for a full description of “employer”.

### 5. What wage and salary information must be disclosed to job applicants?

Applicable employers must disclose in each job posting the wage scale or salary range, and a general description of all the benefits and other compensation for a specific available position to be offered to the hired applicant. See [RCW 49.58.110](#).

#### 5.1 Wage Scale or Salary Range

A wage scale or salary range should provide the applicant with the employer’s most reasonable and genuinely expected range of compensation for the job. The range should extend from the lowest to the highest pay established by the employer prior to publishing the job posting. 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 job posting.

A scale or range’s minimum and maximum should be clear without open-ended phrases such as “\$30,000 *and up*” (with no top of the range), or “*up to* \$29.00/hour” (with no bottom of the scale).

If an employer intends to implement a “starting range” or “starting rate” for an initial timeframe of employment or probationary period, the starting range or rate can be listed on the posting but the entire scale or range must also be listed on the posting. For example, the employer intends to hire an applicant and specifies that new hires generally start between \$50,000 to \$60,000 per year. The employer further specifies that the hired applicant’s placement within the entire range is based on qualifications and professional experience and lists the entire salary range for the position as between \$50,000 - \$70,000 per year. In this case, both the “starting range” and the entire salary range should be disclosed to the applicant.

**EXAMPLE 5.1-1:** If the employer publishes a job posting for a job opening that can be filled with varying job titles, depending on experience, the employer should specify all potential wage scales or salary ranges. The job posting should clearly define the lowest to highest pay established for each potential job position.

- Accounting Analyst 1- \$21.00 - \$26.00 per hour
- Accounting Analyst 2- \$55,000 - \$65,000 per year
- Accounting Analyst 3- \$70,000 - \$85,000 per year

**EXAMPLE 5.1-2:** If the employer posts a job that is compensated by commission rates, the employer should include the rate or rate range (percentage or otherwise) that would be offered to the hired applicant.

- Commission-based salesperson – 5-8% of net sale price per unit

**EXAMPLE 5.1-3:** If the employer posts a job that is compensated by piece-rate, the employer should include the agreed piece-rate or wage scale plus agreed piece-rate.

- Piece-rate agricultural worker - \$0.55-\$0.075 per pound of strawberries picked

Additional compensation disclosures may be required for agricultural workers, see [Farm Labor Contractor & Worker Disclosure Statement Instructions](#).

## 5.2 General Description of All Benefits

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.

Employers do not have to include a dollar figure amount of benefits in a job posting, just a description, but may choose to include a dollar figure if they wish to do so.

**EXAMPLE 5.2-1:** If an employer includes various types of insurance as part of the benefits package, the employer should list out the types of insurance in the job posting, such as medical insurance, vision insurance, dental insurance, life insurance, and disability insurance.

**EXAMPLE 5.2-2:** If an employer includes various types of retirement options as part of the benefits package, the employer should list the retirement option in the job posting, such as 401k, employer-funded retirement plans, deferred compensation, and other defined benefit or defined contribution plans.

**EXAMPLE 5.2-3:** If the employer includes paid time off or paid vacation time as part of the benefits package, the employer should list the amount of days or hours the hired applicant would expect to receive, such as 8 hours per month or 12 days per year.

**EXAMPLE 5.2-4:** If the employer includes paid holidays as part of the benefits package, the employer should list the number of paid holidays the hired applicant would expect to receive in the job posting, such as 10 paid holidays per year. The employer does not have to list each paid holiday.

**EXAMPLE 5.2-5:** If the employer includes a more generous paid sick leave policy as a part of the benefits package, the employer should list the number of hours per month or days per year the hired applicant would expect to receive in the job posting that is greater than Washington State law or any local ordinance, such as 3 hours of paid sick leave for every 40 hours worked or 8 hours of paid sick leave per month.

### 5.3 Other Compensation

“Other Compensation” includes, but is not limited to, any discretionary bonuses, stock options, or other forms of compensation that would be offered to the hired applicant in addition to their established salary range or wage scale. Employers do not have to include a dollar figure amount of “other compensation” in a job posting, just a description, but may choose to do so.

**EXAMPLE 4.3-1:** Hired applicant will be able to purchase company stock, receive annual bonuses, and can participate in profit-sharing.

### 6. Electronic Postings May Link Other Compensation and Benefit Information

In electronic job postings, employers must include a general description of benefits and other compensation but may choose to utilize a link or hyperlink to lead the applicant to a more detailed description.

Similarly, if the benefits and other compensation information is available on the original or subsequent web pages, then the information needs to only be listed at least once.

It is the employer’s responsibility to assure continuous compliance with functionality of links, up-to-date information, and information that applies to the specific job posting, regardless of any use of third party administrators.

### 7. Job Posting Examples

Job postings must include wage and salary information when the posting includes qualifications for desired applicants of a specific position. Qualifications are, but are not limited to, knowledge, skills, or abilities requested of the applicant for suitability of the position.

**7.1 The following examples are not considered a job posting because they do not include qualifications or reference a specific position for a desired applicant.**

**EXAMPLE 7.1-1:** A window sign that reads “Help Wanted”

**EXAMPLE 7.1-2:** A window sign that reads “Help Wanted-Dishwasher. Experience Needed.”

**EXAMPLE 7.1-3:** A website banner that reads “Hiring Now-All Jobs.”

**EXAMPLE 7.1-4 :** A social media post that reads “Manufacturing jobs available, apply now online.”

**7.2 The following examples are considered a job posting because they include qualifications and reference a specific position for a desired applicant.**

**EXAMPLE 7.2-1:** An electronic reader board outside of a business that reads, “Help Wanted- Server. Food Handler’s Certification Needed. Offering: \$24.00-\$26.00 per hour, medical benefits, 70 vacation hours per year, and \$500 sign-on bonus.”

**EXAMPLE 7.2-2:** A social media post that reads, “Seeking applicants for a Billing Specialist position. Must have 2 years of medical bill processing experience. \$30.00-\$40.00 per hour, medical, vision, and dental benefits, 401k retirement plan, and stock options available. More information can be found via hyperlink [here.](#)”



If the employer advertising for a specific available position includes qualifications on a social media post, the employer should treat this as an electronic job posting.

**EXAMPLE 7.2-3:** An e-mail to internal applicants that reads, “If you are a current employee with a bachelor’s degree in computer science, please apply to be an IT Supervisor today! \$150,000-\$170,000 total per year for salary, medical benefits, and bonuses.”

An employer may choose to include the total monetary value of a position’s benefits and other compensation within the wage scale or salary range, as long as the employer notes the benefits and other compensation included within the scale or range.

**EXAMPLE 7.2-4:** An online job board posting that reads, “We are looking for a qualified applicant who has experience with use of spreadsheets and database software for a Data Analyst role. Salary range is \$60,000 - \$68,000 per year. Medical, vision, dental benefits and stock options available for the hired applicant. More information can be found via hyperlink [here](#).”

If the employer advertising for a specific available position includes qualifications on an online job board or web based application, the employer should treat this as an electronic job posting.

## 8. Federal Protections

The federal Equal Pay Act (EPA) also provides equal pay protections to employees. The EPA is enforced by the U.S. [Equal Employment Opportunity Commission](#) (EEOC) and is separate from the Washington state Equal Pay and Opportunities Act.

The federal National Labor Relations Act (NLRA) also provides employees with the right to communicate with other employees at their workplace about their wages. The NLRA is enforced by the [National Labor Relations Board](#) and is separate from the Washington state Equal Pay and Opportunities Act.