Memo

NOTICE OF PERMANENT RULEMAKING HEARING

DATE: September 27, 2019

TO: Legislators and Interested Parties

FROM: Erin Seiler, Senior Policy Advisor

RE: Permanent Rulemaking amending:

OAR 839-008-0015 Bona Fide Factors that May Be Considered in Paying Employees
Performing Work of Comparable Character at Different Compensation Levels

RULE CAPTION:
Repeals definition of “system” to implement OL CH. 617 (2019)
Not more than 15 words that reasonably identify the subject matter of the agency’s intended action.

NOTICE: On September 26, 2019, the Oregon Bureau of Labor and Industries filed a Notice of Proposed Permanent Rulemaking Hearing, with the Oregon Secretary of State, to amend the above referenced administrative rule regarding pay equity.

The Oregon Legislature passed the Oregon Equal Pay Act (the Act) in 2017, which expanded existing equal pay laws based on sex. Effective January 1, 2019, it became an unlawful employment practice to discriminate between employees or applicants in the payment of compensation based on race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. The law provided employers the ability to pay employees for work of comparable character at different compensation levels if all of the differences in compensation levels are based on a bona fide factor related to the position.

In 2019, the legislature passed Senate Bill 123, which made a few specific amendments to the Act. The measure established a statutory definition of “system” for determining pay rates; expressly recognizes that bona fide factors supporting a pay differential may be contained in a collective bargaining agreement; modifies defense against compensatory and punitive damages by eliminating obligation of the employer to review pay freezes; and clarifies that it is not a violation of the Act for an employer to pay a different level of compensation to an employee who is performing modified work.
Prior to the passage of SB 123, “system” was defined only in the administrative rules adopted by the Bureau of Labor and Industries when implementing the original legislation. By defining “system” in statute, the definition of “system” in OAR 839-008-0015(2) needs to be repealed because it conflicts with statute and is beyond the rulemaking authority allowed by the statute the Bureau of Labor and Industries has been authorized to implement.

This Notice of Proposed Permanent Rulemaking does not make any other changes to Chapter 839, Division 8 – Pay Equity rules.

A public hearing is scheduled for 12:00 p.m. on October 17, 2019 at the Oregon Bureau of Labor and Industries, 800 NE Oregon St. #1045, Portland, OR, 97232.

The deadline for public comment on the proposed rules is 5:00 p.m. on October 21, 2019. Members of the public are welcome to submit comments by mail or email prior to this deadline.

ATTACHMENTS: Attached are the Notice of Proposed Rulemaking Hearing, the Statement of Need and Fiscal Impact, and a copy of the rules showing the proposed amendments.

COMMENTS: Comments may be emailed to Erin Seiler at erin.seiler@state.or.us or mailed to Erin Seiler c/o BOLI, 800 NE Oregon St. #1045, Portland OR 97232.