



# Electronic Alert

Volume 21, Issue 17

November 20, 2018

## **BOLI Releases Final Rules On Oregon Equal Pay Law**

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BOLI's long-awaited final rules on Oregon's Equal Pay Law were released late yesterday with BOLI enforcement of the law beginning on January 1, 2019. While the final rules look similar to the draft rules that most employers have seen before, there are some notable differences including an official statement from BOLI about how it intends to enforce certain elements of the law.

We wrote on employer compliance with Oregon's 2017 Equal Pay Law in our Pay Equity alert and our article Equal Pay: 6 Key Questions. Generally, Oregon's Equal Pay Law prohibits employees of a protected class who perform work of comparable character from being compensated unequally unless the entire compensation differential is based on a bona fide factor related to the position.

The final rules modify the definition of "work of comparable character" to mean: substantially similar knowledge, skill, effort, responsibility, and working conditions "**with no single factor being determinative.**" The fact that the rules now use bold-faced type on this phrase signals to employers that if an employer believes different groups of employees do not perform work of comparable character, an employer should be able to identify multiple factors from the list that distinguish the employees' work or explain why one factor alone is strong enough to differentiate the roles.

The final rules also eliminate any guidance on performing an equal pay analysis. Instead, the rules revert to the statute's only definition of what constitutes an equal pay analysis: "an evaluation process to assess and correct wage disparities among employees who perform work of comparable character."

BOLI's official statement published with these rules explains that because the equal pay analysis portion of the law is only applicable in a court setting to limit compensatory and punitive damages, BOLI has no rulemaking authority on the analyses. BOLI notes that the legislature was silent on how employers should conduct these analyses and "with no clear legislative intent and no jurisdiction to oversee these analyses, this was not an appropriate area for rulemaking by BOLI."

For questions on how to prepare for the law's January 1, 2019 enforcement date, contact Nicole Elgin at [nelgin@barran.com](mailto:nelgin@barran.com) or (503) 276-2109 or Andrew Schpak at [aschpak@barran.com](mailto:aschpak@barran.com) or (503) 276-2156.