Oregon Extends Pay Equity Exceptions

Providing Employers with Important Tools to Attract & Retain Talent in Tight Labor Market

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In a historically tight labor market, businesses ought to use all available methods to attract and retain talent. Two useful tools employers should consider implementing are hiring and retention bonuses. Effective March 7, 2022, the Oregon legislature passed Senate Bill 1514, which extends several important amendments to Oregon's Equal Pay Act, including a provision which temporarily exempts hiring and retention bonuses from the Act's definition of "compensation" through September 28, 2022. This exemption allows Oregon employers more leeway to offer bonuses to incentivize prospective and current employees in a particularly challenging labor market without running afoul of Oregon's Equal Pay Act.


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Combatting the Impacts of the "Great Resignation"

This extension comes at a crucial time for many employers. Throughout the COVID-19 pandemic, millions of Americans have left their jobs seeking new employment opportunities — a phenomenon deemed the "Great Resignation." According to the U.S. Bureau of Labor Statistics, more than 47 million Americans voluntarily quit their jobs in 2021. This year appears to be on a similar pace with nearly 4.3 million workers quitting their jobs in January, followed by another 4.2 million in February. Even with job openings near record highs, available workers remain in short supply. So why are workers leaving in such high numbers? According to employees, the top three reasons include a lack of opportunities for advancement, dissatisfaction with workplace culture and inadequate compensation packages. Thus, to remain competitive in such a tight market, it is critical for employers to effectively attract and retain highly sought-after talent.

The Benefits of Hiring & Retention Bonuses

While employers may or may not be able to fulfill employees' requests for advancement or a raise in salary, hiring and retention bonuses offer a helpful middle ground for employers wanting to incentivize prospective and existing employees. Hiring bonuses are typically paid upon a prospective employee starting employment or after the employee has been employed for a specified number of days. Meanwhile, retention bonuses are paid to existing employees who remain employed with the employer through a specified date. These bonuses allow employers to incentivize employees to stay through a busy season or other period where its critical to attract and retain workers. A retention bonus may also be used if an employee receives a competing job offer and the current employer wants to incentivize the employee to stay, but does not have flexibility to simply give the employee a raise to match the competing offer.

Requirements & Exemptions Under Oregon's Equal Pay Act

In 2017, Oregon passed the Equal Pay Act, which prohibits employers from making compensation decisions based on an employee's protected characteristics, including gender, sexual orientation, race, color, religion, national origin, marital status, veteran status, disability or age. Ordinarily, to comply with the Act, employers must make hiring and retention bonuses available to all employees performing work of comparable character on an equal, non-discriminatory basis, subject to differences based only on specific, statutorily-enumerated factors. "Work of comparable character" means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions, regardless of the job description or title. Thus, if an employer chooses to provide an employee a different level of compensation (which includes hiring and retention bonuses), the compensation differential must be justified entirely by one or more non-discriminatory, bona fide factors. These factors are limited to seniority systems, merit systems, the quantity or quality of production, workplace location, travel, education, training, and/or experience. These factors do not include paying an employee differently in response to a challenging labor market or to attract or retain an employee in the face of competing job offers at a higher level of compensation. By enacting SB 1514, the legislature temporarily carved out an exception for hiring and retention bonuses from the definition of "compensation," thereby giving employers far more flexibility to attract new employees and retain talent without having to extend such offers to all similarly situated employees.

Importantly, this exemption is only temporary, and it is currently scheduled to expire on the 180th day following the end of Oregon's state of emergency, which ended on April 1, 2022. Accordingly, this exemption will remain in effect only until September 28, 2022, and employers should take advantage of this exemption while they can.

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