



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: EQUAL PAY AND OPPORTUNITIES ACT

NUMBER: ES.E.1

ISSUED: 11/30/2022

CHAPTER: [RCW 49.58](#)

SEE ALSO: [ES.A.13](#)

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 This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.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 for workers by addressing business practices that contribute to income disparities among genders. Both employees and applicants have rights under this law. Most employers must provide wage and salary information to job applicants.

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

The Equal Pay and Opportunities Act defines an “employee” as being employed in the business of the employee's employer whether by way of manual labor or otherwise. See [RCW 49.58.010](#). 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. See [RCW 49.58.010](#).

The department has authority to investigate complaints filed by employees, former employees, and job applicants against employers in order to enforce 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 skills, efforts, responsibilities, 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](#) and [RCW 49.58.040\(2\)](#).

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 own wages or the wages of any other employee, unless as prohibited under RCW 49.58.040(3)

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](#). Employers cannot ask about a job applicant's 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. An employer may confirm an applicant's wage or salary history if the applicant voluntarily discloses their history or after the employer negotiates and makes an offer of employment including compensation to the applicant.

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 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 a wage scale or salary range and a general description of benefits and other compensation on a job posting?

All employers, with 15 or more employees, engaging in any business, industry, profession, or activity in Washington must disclose a wage scale or salary range and a general description of benefits and other compensation on job postings that recruit Washington based employees. See [RCW 49.58.010\(5\)](#) and [RCW 49.58.110](#).

3.1 15 or more employees. The “15 or more employees” threshold includes employees that do not have a physical presence in Washington, if the employer has one or more Washington-based employees. See [ES.A.13, “Minimum Wage Act- Washington Based Employee”](#) for a description of the factors the department applies to determine whether an employer has Washington-based employee(s).

3.2 Engaging in Business in Washington. “Engaging in any business, industry, profession, or activity in Washington,” for the purposes of [RCW 49.58.110](#), includes employers that do not have a physical presence in Washington, but engage in business in Washington or recruit for jobs that could be filled by a Washington-based employee.

Employers must disclose a wage scale or salary range and a general description of benefits and other compensation on postings for remote work that could be performed by a Washington-based employee. For factors used to determine whether an employee is Washington-based, see [ES.A.13, “Minimum Wage Act- Washington Based Employee.”](#) An employer cannot avoid disclosing wage and salary information requirements by indicating within a posting that the employer will not accept Washington applicants.

Employers do not need to disclose wage and salary information for jobs to be performed entirely outside of Washington even if the job posting reaches applicants who would fill the position as a Washington-based employee. This out-of-state exception must be applied narrowly, on a case-by-case basis. The out-of-state exception applies to jobs tied to worksites physically located entirely outside of Washington, for example, waitstaff at restaurant locations in other states.

Employers do not need to disclose wage and salary information in printed hard copy postings made and distributed entirely outside of Washington.

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

All applicants, including existing employees, who apply to a posting recruiting Washington-based employees, with an employer as defined by [RCW 49.58.010](#), including employers who may not have a physical presence or employee in Washington State, are protected by the law. See Section 1 of this policy for definition of “employer.”

A person is only considered an “applicant” for the specific posting(s) they applied for, not for every available job of the employer.

If a person is offered a position that is different than the position applied for, the employer should disclose wage and salary information by providing a copy of the compliant posting for the position offered.

5. What information must be disclosed on a job posting?

Beginning January 1, 2023, applicable 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 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 posting.

A scale or range's minimum and maximum should be clear without open-ended phrases such as "\$60,000/per year *and up*" (with no top of the range), or "*up to* \$29.00/hour" (with no bottom of the scale).

If the wage scale or salary range changes after a posting has been published, an employer should update the posting to reflect the updated wage scale or salary range.

If the employer offers a different position than what the applicant applied for, the employer may offer the applicant the wage scale or salary range specific to the position offered, rather than the position in the posting.

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 may 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 \$60,000 and \$65,000 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 \$60,000 and \$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- \$27.00 - \$29.00 per hour
- Accounting Analyst 2- \$65,000 - \$80,000 per year
- Accounting Analyst 3- \$80,000 - \$110,000 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-\$0.75 per pound of strawberries picked.

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

EXAMPLE 5.1-4: If the employer posts a job that is compensated by the greater of a piece-rate or hourly rate, the employer should include the agreed piece-rate or wage scale and the agreed hourly rate:

- Piece-rate agricultural worker – The greater of: \$0.75 per pound of strawberries picked or \$19.00/hour.

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.

A general description of all benefits should provide the applicant with the employer’s most reasonable and genuinely expected benefits offered for the specific available position. If the general description of benefits changes after a posting has been published, an employer should update the posting to reflect the updated benefit information.

Insurance: 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.

Retirement Plans: 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.

Paid Time Off or Vacation: 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.

Paid Holidays: 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.

More Generous Paid Sick Leave: If the employer includes a paid sick leave policy that is more generous than that provided by Washington State law or any local ordinance that applies 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.

EXAMPLE 5.2-1 General Description of All Benefits: “Employees (and their families) are covered by medical, dental, vision, and basic life insurance. Employees are able to enroll in our company’s 401k plan, as well as a deferred compensation plan. Employees will also receive eight hours of vacation leave every month and twelve paid holidays throughout the calendar year.”

5.3 General Description of Other Compensation. “Other Compensation” includes, but is not limited to, bonuses, commissions, profit-sharing, 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.

EXAMPLE 5.3-1 General Description of Other Compensation: “Hired applicant will be able to purchase company stock, receive annual bonuses, and can participate in profit-sharing.”

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

On 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 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, specific 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”.

This example does not include qualifications or reference a specific position for a desired applicant.

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

This example does not include qualifications for a desired applicant.

EXAMPLE 7.1-3: A website banner that reads “Hiring Now-All Jobs. Food Handler’s permit required.”

This example does not reference a specific position for a desired applicant.

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

This example does not include qualifications or reference a specific position for a desired applicant.

EXAMPLE 7.1-5: An electronic reader board outside of a business that reads, “Help Wanted- Server. Offering minimum wage plus tips”

This example does not include qualifications for a desired applicant.

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 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 - \$80,000 per year. Medical, vision, dental benefits, tuition reimbursements, 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.