

A-Engrossed
House Bill 3205

Ordered by the House April 7
Including House Amendments dated April 7

Sponsored by Representatives BYNUM, HELFRICH, Senator MANNING JR; Representatives BOSHART DAVIS, DIEHL, LIVELY, NGUYEN D, OSBORNE, PHAM H, RESCHKE, RUIZ, STOUT, WALLAN, Senators BONHAM, DEMBROW, GORSEK, HANSELL, MEEK, STEINER, WOODS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Modifies definition of "compensation," for purposes of pay equity requirements, to exclude hiring bonuses and retention bonuses.]

Permits employer to pay employees at different compensation levels pursuant to retention bonus provided that employer does not discriminate in payment of retention bonus, and that retention bonus accounts for entire compensation differential.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the exemption of certain bonuses from pay equity requirements; amending ORS 652.220;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 652.220 is amended to read:

6 652.220. (1) It is an unlawful employment practice under ORS chapter 659A for an employer to:

7 (a) In any manner discriminate between employees on the basis of a protected class in the pay-
8 ment of wages or other compensation for work of comparable character.

9 (b) Pay wages or other compensation to any employee at a rate greater than that at which the
10 employer pays wages or other compensation to employees of a protected class for work of compa-
11 rable character.

12 (c) Screen job applicants based on current or past compensation.

13 (d) Determine compensation for a position based on current or past compensation of a prospec-
14 tive employee. This paragraph is not intended to prevent an employer from considering the com-
15 pensation of a current employee of the employer during a transfer, move or hire of the employee to
16 a new position with the same employer.

17 (2) Notwithstanding subsection (1) of this section:

18 (a) An employer may pay employees for work of comparable character at different compensation
19 levels if all of the difference in compensation levels is based on a bona fide factor that is related
20 to the position in question and is based on:

21 (A) A seniority system;

22 (B) A merit system;

23 (C) A system that measures earnings by quantity or quality of production, including piece-rate
24 work;

25 (D) Workplace locations;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (E) Travel, if travel is necessary and regular for the employee;

2 (F) Education;

3 (G) Training;

4 (H) Experience; or

5 (I) Any combination of the factors described in this paragraph, if the combination of factors
6 accounts for the entire compensation differential.

7 (b) An employer may pay employees for work of comparable character at different compensation
8 levels on the basis of one or more of the factors listed in paragraph (a) of this subsection that are
9 contained in a collective bargaining agreement.

10 **(c)(A) An employer may pay employees for work of comparable character at different**
11 **compensation levels pursuant to a retention bonus, provided that:**

12 **(i) The employer does not discriminate between employees on the basis of a protected**
13 **class in the payment of the bonus; and**

14 **(ii) The retention bonus paid accounts for the entire compensation differential.**

15 **(B) Nothing in this section prohibits an employer from conditioning the employee's el-**
16 **igibility for a retention bonus upon a requirement that the employee work for the employer**
17 **for a specified period of time that is at least 30 days.**

18 (3) An employer may not in any manner discriminate in the payment of wages or other com-
19 pensation against any employee because the employee has filed a complaint under ORS 659A.820 or
20 in a proceeding under ORS 652.210 to 652.235 or 659A.885 or has testified, or is about to testify, or
21 because the employer believes that the employee may testify, in any investigation or proceedings
22 pursuant to ORS 652.210 to 652.235, 659A.830 or 659A.885 or in a criminal action pursuant to ORS
23 652.210 to 652.235.

24 (4) An employer may not reduce the compensation level of an employee to comply with the
25 provisions of this section.

26 (5) It is not a violation of this section for an employer to pay a different level of compensation
27 to an employee who:

28 (a) Pursuant to a claim for a compensable injury under ORS chapter 656, receives wages for
29 modified work; or

30 (b) As a result of a medical condition, is temporarily performing modified work that is:

31 (A) Authorized by a medical professional licensed under ORS chapter 677; or

32 (B) Requested by the employee and authorized by the employer in a manner that does not dis-
33 criminate against employees on the basis of a protected class.

34 (6) Amounts owed to an employee because of the failure of the employer to comply with the
35 requirements of this section are unpaid wages.

36 (7) An employee who asserts a violation under this section may file a complaint with the Com-
37 missioner of the Bureau of Labor and Industries under ORS 659A.820, a civil action under ORS
38 652.230 or a civil action under 659A.885.

39 (8) An employer shall post a notice of the requirements of this section in every establishment
40 where employees work. The Bureau of Labor and Industries shall make available to employers a
41 template that meets the required notice provisions of this section.

42 **SECTION 2. This 2023 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
44 **on its passage.**