

July 10, 2019

HB 1696 / Equal Pay & Opportunities Act Guidance

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OFM

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ESHB 1696: Effective on July 28, 2019

Introduction

The WA Legislature finds that despite existing equal pay laws, there continues to be a gap in wages and advancement opportunities among workers in Washington, especially women.

Through the EPOA (2018) and HB1696 (2019), the Legislature is following a trend in public and private organizations to adopt laws and policies prohibiting the use of prior pay information to set compensation for new hires—a practice that may perpetuate the pay disparity between men and women.

Apart from gender, salary disparities may also occur for other protected classes, e.g. race, color, religion, national origin, or age.

- Reference: Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, and other classes protected by the WA Human Rights Commission, etc.

Agenda

Recap of the Equal Pay & Opportunities Act (EPOA)

ESHB 1696 Overview

- Becomes Effective July 28, 2019

Employment Process Guidance

Next Steps

Questions

Washington State's Equal Pay & Opportunities Act (EPOA)

The Act Promotes Fairness Through:

- **Equal pay.** Employers must provide equal compensation to similarly employed workers, except for some specific reasons unrelated to gender.
- **Equal career advancement opportunities.** Employers must not limit or provide career advancement opportunities based on gender.
- **Open wage discussions.** Employers cannot stop employees from disclosing their wages with other workers or require agreements with employees that stop them from disclosing their wages.
- **Protection from discrimination, retaliation and firing.** Employers cannot take any negative action against an employee for discussing wages, filing a complaint or exercising other rights under the Equal Pay and Opportunities Act.

Washington State's Equal Pay & Opportunities Act (EPOA)

Acceptable reasons for a difference in pay

Education, training or experience

Seniority

Merit

Measuring earnings by production quantity or quality

Regional difference in compensation levels

Other reasons for a difference in pay that *may* be acceptable

Job-related factors consistent with business need

Reasons not based on gender

Local minimum wage laws

Equal Pay & Opportunities Act (2018)

Effective on July 28, 2019, HB1696 expands the EPOA by prohibiting inquiries into salary history and compel more transparency regarding wage scales for open positions.

ESHB 1696: Overview

Don't Seek applicant wage/salary history and don't require prior wage/salary meet certain criteria

Confirm prior salary only after candidate volunteers or post-offer

Post offer, per candidate's request, provide range minimums, pay range, or a 'salary expectation set by the employer'

ESHB 1696 Overview, continued

For All State of WA Employers:

1. Employers may not seek the wage/salary history of an applicant, either from the applicant or their current or former employer, except as allowed in #3, below.
2. Employers may not require applicants' prior wage/salary to meet certain criteria, e.g. meet a certain level or threshold.

ESHB 1696 Overview, continued

3. To facilitate the employment process, employers may confirm an applicant's wage or salary history only
 - (1) if the applicant has voluntarily disclosed their wage or salary history, or
 - (2) after the employer has negotiated and made a job offer, including the amount of compensation, to the applicant.

ESHB 1696 Overview, continued

For employers with fifteen or more employees:

4. Post offer, employers must provide the minimum wage or salary for the position for which the applicant is applying (upon applicant's request).
 - Upon request of an employee offered an internal transfer to a new position/promotion/ demotion/transfer, the employer must provide the wage scale or salary range for the employee's new position.

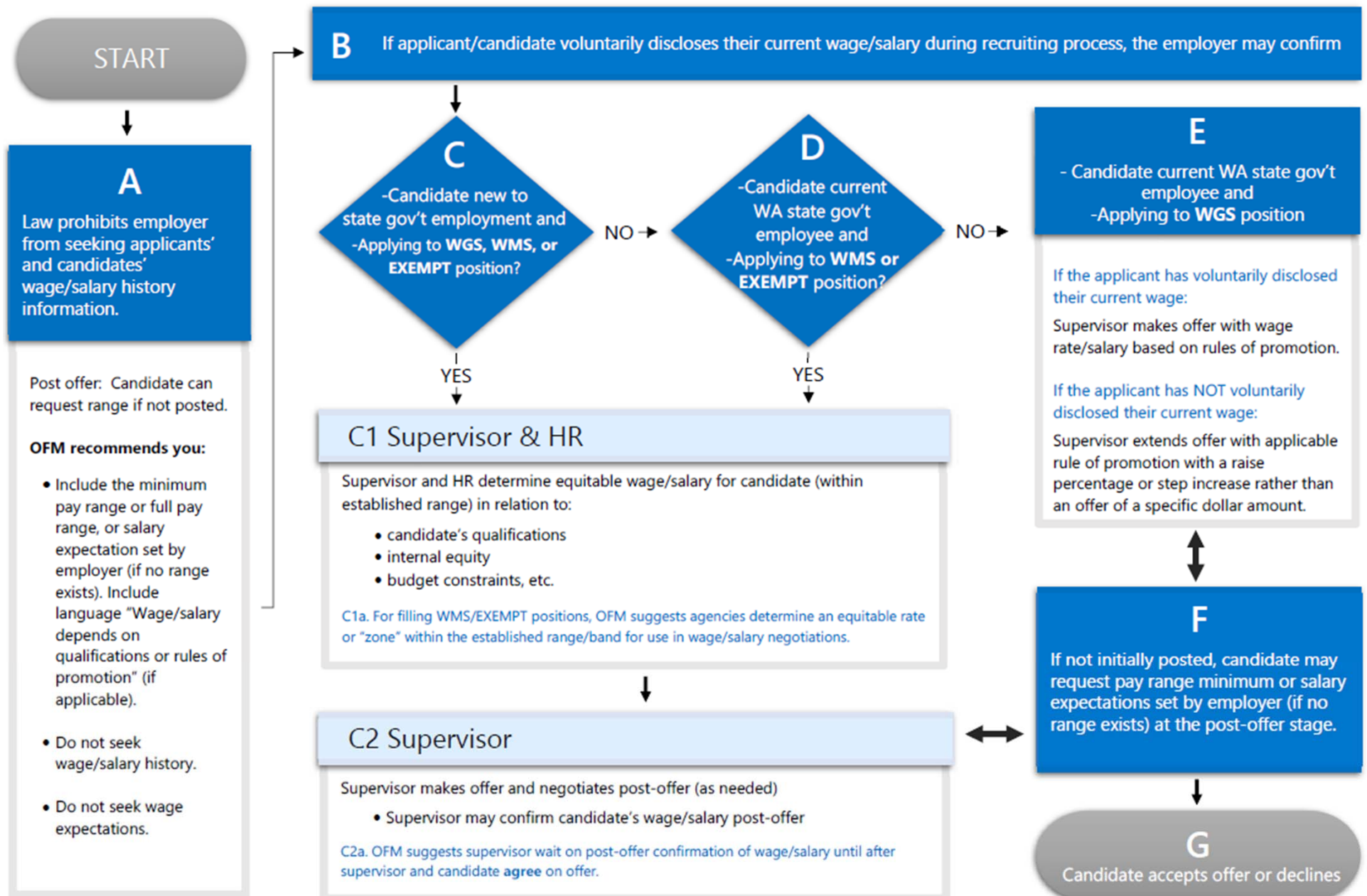
ESHB 1696 Overview, continued

- If no wage scale or salary range exists, the employer must provide the minimum wage or salary expectation set by the employer prior to posting the position, making a position transfer, or making the promotion.
- Penalties for violating the law are similar to those imposed for violations of the other Equal Pay and Opportunity Act provisions.

Guidance

**All Position Offers, e.g.
New Hires, Promotions,
Laterals, etc.**

Equal Pay & Opportunity Act salary - Compensation Guidance (HB 1696)



Caution

Under the Equal Pay and Opportunities Act, an individual's previous wage or salary history is not a defense for gender pay differences (RCW 49.58.020(3)(d)).

- It's best practice to have documented acceptable bona fide factors (as described in RCW 49.58.020(3)(b)(i)-(v)) to justify an employee's pay rate.

Next Steps – SHR Rules

SHR Rules: At the August 13th Rules Meeting new WACs will be introduced to address the following for WGS and WMS:

- When an employer may not seek the wage or salary history of an applicant
- When may an employer confirm an applicant's wage or salary history
- When must an employer provide the minimum wage or salary for a position.

OFM Recommendations for Agency Management

- **Do not** seek an applicant's or candidate's salary expectations, as well as wage or salary history. This practice may further perpetuate pay disparities between men, women, and other protected classes.
- Include wage/salary minimum, full pay range or salary expectations set by the employer on job postings.
- Determine equitable wage/salary offers for candidates vs. existing staff performing similar work in relation to acceptable reasons for pay differences (as mentioned in EPOA)

OFM Recommendations for Agency Management, continued

- If prior wage/salary confirmation is necessary for your processes, e.g. confirming current step for rules of promotion, **ONLY** confirm wage/salary histories after candidate voluntarily discloses, or accepts an offer.
- **Destroy or redact** any “in process” application material with wage/salary history on or before July 28th, and ask applicants to re-apply (if necessary).

OFM Recommendations for Agency Management, continued

- Change agency-created application forms/processes regarding compensation history and expectations, as needed.
 - NeoGov & SHR Forms already changed
- Don't look up candidate's prior salary in various systems, e.g. HRMS and fiscal.wa.gov (no SNOOPING!)

Agency HR Manager Guidance

-OFM/SHR will send you electronic copy of guidance for your distribution

-Forward OFM/SHR guidance to agency leadership, hiring supervisors, recruiters, etc.

- Instruct your agency to forward questions to you

-Continue to advise agency hiring managers on equitable offers in relation to candidates' qualifications and internal equity

QUESTIONS?

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FOR MORE INFORMATION:

Please contact your agency's
Human Resources Office

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