



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: EQUAL PAY AND OPPORTUNITIES ACT

NUMBER: ES.E.1

**CHAPTER: [RCW 49.58](#)
[WAC 296-123](#)**

ISSUED: 11/30/2022
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**SEE ALSO: [ES.A.13](#)
ES.E.2**

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 This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

The Equal Pay and Opportunities Act prohibits pay discrimination and promotes fairness in career advancement opportunities for workers by addressing business practices that contribute to income and advancement disparities amongst genders and memberships in a protected class. Both employees and applicants have rights under this law. This policy provides guidance on equal pay, equal career advancement, open wage discussions, wage and salary history, and retaliation protections under the Equal Pay and Opportunities Act ([RCW 49.58](#)). Guidance on job posting requirements in [RCW 49.58](#) can be found in Administrative Policy ES.E.2, "Job Posting Requirements."

1. Employee and 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 a person’s gender, perceived gender, or membership, or perceived membership in a protected class. 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](#) and [WAC 296-123-020](#).

Protected class is a person’s age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, as those terms are defined by RCW 49.60.040. See [WAC 296-123-010\(10\)](#) .

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 deprive an employee of career advancement opportunities on the basis of a person’s gender, perceived gender, or membership, or perceived membership in a protected class. See [RCW 49.58.030](#) and [WAC 296-123-030](#).

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

Career advancement opportunities are formal or informal occasions for an employee to gather additional skills, knowledge, or experience with the purpose of furthering their career. Career advancement opportunities may include, but are not limited to, promotions, trainings, classes, mentorships, or special projects. See [WAC 296-123-030\(1\)](#).

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.

1.6 Job Posting Requirements. Guidance on job posting requirements in [RCW 49.58](#) can be found in Administrative Policy ES.E.2, "Job Posting Requirements." See ES.E.2

2. 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.