Pay Equity Comes to the Ocean State: What Rhode Island Employers Need to Know About New Pay Equity Law

Insights
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Rhode Island Governor Daniel McKee recently signed broad new pay equity legislation into law that will require you to change many common workplace practices, slated to take effect on January 1, 2023. While it might seem so far into the future that you can ignore the law for the time being, you would best be served by beginning your compliance efforts now to put your organization in the best position to get in line with the new standards. Like many other states' pay equity laws, the new law will prohibit you from requesting applicants' salary histories before initial employment offers and requires pay transparency in the workplace. Unlike many other states' pay equity laws, however, which focus primarily on achieving pay parity between the genders, Rhode Island's Act addresses wage discrimination based on several protected characteristics beyond sex. The new law also provides a safe harbor mechanism that might permit you to escape legal liability, but which requires you to take proactive steps sooner rather than later. What do you need to know about – and do as a result of – this significant new law?

What are an Employer's Obligations?

The Act prohibits an employer from paying any employee "at a wage rate less than the rate paid to employees of another race, or color, or religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin for comparable work."

- "Wage" includes nearly all types of compensation, but expressly excludes tips and overtime pay.
- "Comparable work" means work that, "as a whole," requires "substantially similar skill, effort, and responsibility, and is performed under similar working conditions." Minor differences in skill, effort, or responsibility will not prevent two jobs from being deemed comparable.

If two employees are performing comparable work as defined by the Act, wage disparities are only permissible if reasonably explained by, or if the employer reasonably relied on, one or more of the following:

- seniority;
- a merit system;
- a system which measures earnings by quantity or quality;

- geographic location;
- shift differentials;
- job-related education, training, or experience;
- work-related travel; or
- any other bona fide job-related factor other than membership in a protected class.

Importantly, employers may not reduce any employees' wages to comply with the Act, and employees may not agree to be paid less than that to which they are entitled under the Act. In addition, employees' wage histories may not be used to justify a pay differential.

Employers must conspicuously post a notice of employee rights under the Act, to be published by the Rhode Island Department of Labor and Training ("RIDLT"), or face a civil penalty of between $100 and $500.

How Can You Avoid Liability?

Through June 30, 2026, employers will have an affirmative defense to all liability for any alleged unlawful pay practices if they can show they: (1) conducted a "self-evaluation" of their pay practices within the two years preceding the commencement of a pay equity lawsuit; and (2) can show they have eliminated the allegedly unlawful wage differentials revealed by the self-evaluation. The Act states that the RIDLT will issue a template for employers to complete self-evaluations; however, employers may use their own forms if they choose. An employer has 90 days from the date it completes a self-evaluation to perform any necessary wage adjustments to take advantage of the affirmative defense.

After June 30, 2026, employers that perform good-faith self-evaluations and eliminate any unlawful wage differentials will not be liable for compensatory damages, liquidated damages, or civil penalties – but can still be liable for unpaid wages and equitable relief.

Salary History Inquiries Prohibited

The Act also prohibits employers from asking for or relying on applicants' wage histories when deciding whether to consider them for employment and, when, hiring individuals, determining what wages to pay them. After extending an initial employment offer, employers may use an individual's wage history to justifying increasing the compensation offered, but only if:

- the wage history was voluntarily provided by the applicant without the employer's prompting; and
- the contemplated, higher wage does not create an unlawful pay differential within the organization.

Do We Have to Disclose Salary Ranges for our Positions?

Employers must also provide a wage range for any position, including open positions, upon request. Likewise, an employer "should provide a wage range for the position the applicant is applying for prior to discussing compensation." In addition, when a current employee transfers to a different position within the company, the employer must provide the wage range for the new position, even if the employee does not affirmatively request it.

Employers are prohibited from retaliating against applicants or employees for requesting wage ranges. Employers also may not prevent "an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee or retaliate against an employee who engages in such activities."

What are the Penalties for Non-Compliance?

If, after an RIDLT investigation, the agency determines that an employer has violated the Act's pay equity mandates, it may impose civil penalties between $1,000 and $5,000, depending on the number of previous violations of the Act, the size of the employer, the good faith of the employer, the gravity of the violation, and whether the employer made an innocent mistake or acted willfully. The RIDLT may also order other appropriate relief or refer the case to the state attorney general. Note that the Act gives employers a grace period, as it provides that no civil penalties may be assessed from January 1, 2023 to December 31, 2024.

The Act also permits individuals to file a complaint with the RIDLT or in court within two years after the occurrence or discovery of an occurrence that may violate the Act, or within three years after the occurrence or discovery of such an occurrence if the complaint alleges a "willful and wanton" violation. An employer may be liable in such an action for compensatory damages, "special damages" of up to $10,000, up to twice the amount of unpaid wages and/or benefits owed as liquidated damages, reinstatement of the employee's position, fringe benefits, and seniority rights, punitive damages (if the employer acted with malice or reckless indifference), and attorneys' fees and costs.

What's Next?

The RIDLT has been tasked with developing the Act's implementing regulations, but has not provided a timeframe for publishing the regulations, the required employer notice, or the self-evaluation template. Rhode Island employers should stay abreast of regulatory updates and/or RIDLT guidance on the Act.

Employers should also consult with their Fisher Phillips attorney to review their compensation, interviewing, and hiring policies and practices and to discuss potential self-evaluations before the Act takes effect in January 2023.

One of the challenges of the self-audit for Rhode Island employers is that because the Act addresses pay disparities based on characteristics other than gender, a self-evaluation will require taking into consideration protected characteristics about which many employers do not currently collect information, such as religion and sexual orientation. Your employment counsel can help you determine the best approach to these issues and help ensure timely compliance with the new law.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Rhode Island employers, so make sure you are subscribed to Fisher Phillips' Insight system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this alert, or any attorney in our Boston office or in our Pay Equity Practice Group.

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