



Ready to Comply?

State law mandates equal career opportunities.



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WASHINGTON'S EQUAL PAY OPPORTUNITY ACT, which went into effect on June 7, requires more than just equitable pay across genders. The law also prohibits limiting or depriving an employee of "career advancement opportunities" that would otherwise be available but for an employee's gender. Accordingly, Washington employers must be prepared to justify differences in career advancement opportunities between genders based on bona fide factors unrelated to gender and consistent with business necessity. These bona fide factors can include, but are not limited to, experience, education, performance and seniority.

Washington's Equal Pay Opportunity Act also imposes new standards. First, it requires employers to pay equal compensation to employees who are "similarly employed," or justify any and all pay disparities based on the above bona fide factors. Second, the law does not allow employers to rely on a candidate's prior wages to explain or justify pay differences. Third, the law restricts employers from prohibiting employees from talking about wages, except in limited circumstances.

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Washington's requirement that employers provide equal career advancement opportunities is unique among pay equity laws and designed to address a commonly recognized cause of pay disparities between men and women — the opportunity gap. Research shows that women are less represented in senior level positions, and when they do land these positions, they do so much later in their careers. A recent PayScale report, which is consistent with similar studies, shows that by mid-career, only 40 percent of women have moved into management roles, compared to 52 percent of men. The study also found that men are 70 percent more likely to be in vice president or C-suite roles in mid-career, and men are 142 percent more likely to be in leadership roles later in their careers.

Multiple factors are believed to contribute to the opportunity gap. Unconscious biases can color how we evaluate a person's skills and potential. For example, studies have shown that men are more likely to be positively evaluated for innate abilities (e.g., "he seems smart").

Women and minorities are more likely to be perceived as innately less suitable than men for leadership roles. Also feeding the opportunity gap is the greater frequency at which women take time away to care for children or elderly parents. PayScale found that women are five times more likely to take one year or more off for these reasons, and women also take more days off to tend to sick children.

What can employers do now to ensure compliance with Washington's "career advancement opportunities" law?

- Evaluate promotion policies and practices. Hand-picking employees for promotion and closed recruitment processes exclude employees from career advancement opportunities and may violate the law.
- Consider requiring hiring managers to provide two to four objective reasons for their promotional decisions and evaluate those decisions for consistency and compliance.
- Maintain records on how a promotion was handled, including who was considered for the promotion and why the process might have deviated from standard practices.
- Assess succession planning practices to ensure that all potential candidates are evaluated and afforded opportunities to develop and be considered for more senior positions.
- Educate managers on unconscious bias and train on the expectation of inclusive promotional processes.
- Consider allowing for greater workplace flexibility to allow employees to more effectively balance family and work needs.
- Promote use of paid and unpaid time off for bonding with a child and addressing family-related issues to all employees, not just women.
- Embrace and promote increased diversity through expressed organizational values, ongoing discussions and integration of related best practices.

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