

Employment Law Summary

Rhode Island Fair Employment—Equal Pay Law



Because You're Different

The federal Equal Pay Act (EPA) requires that men and women receive equal pay for equal work in the same establishment. In addition to the federal EPA, many states, including Rhode Island, have enacted their own equal pay laws prohibiting wage discrimination based on gender.

This Employment Law Summary provides an overview of Rhode Island's Equal Pay Law, which was amended as of Jan. 1, 2023, to expand pay equity protections and to impose new obligations and prohibitions related to wage disclosure and wage history on employers in the state.

PROHIBITED WAGE DIFFERENTIALS

The Equal Pay Law originally prohibited unequal pay for comparable work based on sex. **As of Jan. 1, 2023**, wage differentials based on any of several additional traits are also prohibited. These additional protected traits are race, color, religion, sexual orientation, gender identity or expression, disability, age (40 or older) and country of ancestral origin.

The prohibition against wage differentials applies to employees who perform "comparable work." Under the law, comparable work is generally defined as work that:

- Requires substantially similar skill, effort and responsibility; and
- Is performed under similar working conditions.

However, the law also specifies that:

- Determining whether jobs are comparable requires an analysis of the jobs as a whole; and
- Minor differences in skill, effort or responsibility will not prevent two jobs from being considered comparable.

If an employer is in violation of the equal pay provisions, it may not reduce an employee's wages to comply.

EXCEPTIONS

Employers may pay different wages if the differential is based on any of the following, as long as reliance on it is not a pretext for an unlawful wage differential:

- A seniority system (under which time spent on leave due to a pregnancy-related condition or parental, family and medical leave does not reduce seniority);
- A merit system;
- A system that measures performance based on the quality or quantity of production;
- Geographic locations (outside of Rhode Island) with different costs of living;
- Reasonable shift differentials;
- Education, training, or experience that is job-related and consistent with a business necessity;
- Work-related travel, if the travel is regular and a business necessity; or

- A bona fide factor other than a protected trait that is:
 - Not based upon or derived from a protected trait;
 - Job-related; and
 - Consistent with business necessity.

WAGE RANGE DISCLOSURE REQUIREMENTS FOR AVAILABLE JOBS

As of Jan. 1, 2023, the Equal Pay Law requires employers to provide job applicants with the wage range for the positions they apply for if requested. It also requires employers to provide the wage range for a position upon hiring or moving an employee to the position and upon the request of an employee holding the position.

PROHIBITIONS AGAINST SEEKING OR USING PAST PAY

The Equal Pay Law prohibits employers from asking about or otherwise seeking the wage history of a job applicant. It also prohibits employers from:

- Relying on an applicant's wage history when:
 - Deciding whether to consider the applicant for employment; or
 - Determining the wages to pay the applicant upon hire;
- Requiring an applicant's prior wages to satisfy a minimum or maximum as a condition of the applicant being considered for hire; or
- Seeking an applicant's wage history.

EXCEPTIONS

Applicants may share their wage history with an employer voluntarily. After an employer makes an initial offer of employment with an offer of compensation, the employer may rely on or seek to confirm any voluntarily provided wage history information, but only if it is for the limited purpose of supporting a wage offer higher than the initial wage offered by the employer.

The law also allows employers to:

- Verify information voluntarily provided by an applicant regarding the applicant's unvested equity or deferred compensation that the applicant would forfeit or have canceled due to resignation from a current employer; and
- Request a background check that does not affirmatively seek wage history (if a background check does disclose an applicant's wage history, the employer may not rely on that information to determine wage, benefits or other compensation for the applicant).

PROTECTIONS FOR EMPLOYEE DISCUSSION OF WAGES

As of Jan. 1, 2023, it is unlawful for an employer to prohibit an employee from discussing wages or aiding or encouraging other employees to talk about wages. Employers also may not retaliate against employees for engaging in those activities.

PROHIBITED RETALIATION

Employers may not retaliate, discharge or otherwise discriminate against an employee or applicant because the individual has filed a complaint or otherwise participated in the enforcement of the law.

POSTING REQUIREMENT

The Equal Pay Law requires every employer to post a [notice](#) about employees' rights in a conspicuous place on its premises. Employers that fail to post the notice may be subject to fines of between \$100 and \$500.

ENFORCEMENT

Job applicants and employees who believe an employer has violated the Equal Pay Law may either file a complaint with the [Rhode Island Department of Labor and Training](#) (Department) or file a lawsuit in court. Individuals generally have up to **two years** from the date of a violation to initiate these actions.

If an employer is found to be noncompliant, the Department or a court may order it to:

- Pay any unpaid wages and benefits, compensatory damages, and an additional amount equal to double the amount of unpaid wages and benefits;
- Pay special damages of up to \$10,000;

- Pay civil penalties of up to \$5,000 for each violation of the prohibitions against seeking or using wage history or the requirements to provide wage ranges (however, these civil penalties will not be assessed until **Jan. 1, 2024**);
- Provide equitable relief, such as the reinstatement of employment, fringe benefits and seniority rights; and
- Pay reasonable attorney's fees and costs.

TEMPORARY DEFENSE TO WAGE DIFFERENTIAL CLAIMS

Employers facing actions alleging a violation of the wage differential prohibitions have an affirmative defense available **until June 30, 2026**. An employer may use this defense if it can prove that:

- It conducted a good-faith [self-evaluation](#) of its pay practices within the previous two years and prior to when the action was filed; and
- Any unlawful wage differentials revealed by its self-evaluation have been eliminated.

MORE INFORMATION

Contact Heffernan Insurance Brokers for more information on Rhode Island's fair employment laws.

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