

RIDLT Proposes Regulations and Issues Compliance Guidance for the New Pay Equity Law

Description

The Rhode Island Department of Labor and Training's ("RIDLT") much anticipated Proposed Regulations ("Regulations") to the Rhode Island Pay Equity Law (the "Act") have arrived. As we [previously discussed](#), on July 6, 2021, Rhode Island Governor Daniel McKee signed the Act into law, which goes into effect on January 1, 2023. The crux of the Act prohibits an employer from paying wages to any of its employees at a rate less than the rate it pays to employees of another race, color, religion, sex, sexual orientation, gender identity or expression, disability, age (40 or over), or country of ancestral origin for the performance of comparable work unless the employer can demonstrate that the wage differential is pursuant to one or more permissible justifications prescribed under the Act.

The RIDLT has announced that members of the general public have until June 30, 2022 to request additional information from or submit written or oral comments to the RIDLT with regards to the Regulations. An in-person public hearing intended to elicit comments from the general public with respect to the Regulations will be held on June 23, 2022 at 3:00 p.m. at the RIDLT. The Regulations will officially be finalized at some point following June 30, 2022.

While the bulk of the Regulations' provisions are needless reiterations of the Act's text, the Regulations contain some new and otherwise noteworthy provisions as follows:

1. **Employers' Responses to Wage Range Inquiries Must Include Minimum and Maximum Wages Paid.** The Act requires employers to provide the "wage range" of a position to an applicant for the position being sought upon the applicant's request. Likewise, employers must provide the same information to an existing employee upon request as to a current position. The Act defines "wage range" as "the wage range that the employer anticipates relying on in setting wages for the position" and it may include reference to any applicable pay scale, previously determined range of wages for the position, the actual range of wages for those currently holding equivalent positions, or the budgeted amount for the position, if any.

The Regulations add that when providing wage ranges, employers "must provide the inquiring individual with at least the minimum and maximum wages paid for the position of employment or position posted." Moreover, in the Regulations' Regulatory Analysis Summary, the RIDLT provides that an employer must conduct an analysis of comparable work when determining what job functions or positions to include in the wage range provided to an inquiring applicant or employee. While this Summary does not carry the same legal weight and authority as the Regulations, courts will defer to its contents when applying and/or interpreting the Act and the Regulations.

2. **Use of the RIDLT Self-Evaluation Template Does Not Automatically Amount to Due Diligence.** The Act provides an avenue for an employer to be absolved from liability against legal action for wage differentials where the employer can demonstrate that it conducted a "good faith self-evaluation" of its pay practices within the previous two (2) years and prior to commencement of the action, and if it can show that any unlawful wage differentials revealed by the self-evaluation were eliminated. To be eligible for this affirmative defense, the elimination of the wage differentials must occur within ninety (90) days from the completion of the self-evaluation. An employer's self-evaluation may consist of the employer's own design or via the RIDLT template. Ultimately though, the scope and detail of the self-evaluation must reflect the exercise of "due diligence" by the employer to identify, prevent, and mitigate violations of the Act in light of the employer's size.

The RIDLT has issued a [draft template](#) on its website, free of charge, in the form of an Excel Spreadsheet. Not only does the template serve as a tool for employers to utilize when conducting a self-evaluation, the template

also offers “Example Scenarios” identifying potential violations of the Act. The RIDLT has also issued corresponding step-by-step Guidance to assist employers in conducting a self-evaluation. The Regulations clarify that an employer’s mere use of the RIDLT template does not automatically amount to the employer’s exercise of due diligence. Along the same lines, the Regulations also provide that use of a form other than the RIDLT template is not evidence of a lack of due diligence.

3. **Mandatory Notice.** Employers are required to post in a conspicuous place on its premises a notice containing excerpts and other information about the Act for employees’ review. The Regulations indicate that this mandatory notice will be made available by the RIDLT on its website, free of charge. However, the Regulations do not include a timeframe as to when the notice is expected to be made available.

As we previously discussed, given the penalties and damages available under the Act, and the safe harbor for employers to eliminate those penalties and liabilities, employers should be familiar with the Act and the safe harbor and other requirements well in advance of the Act’s effective date. Employers should begin taking the necessary action to comply with the Act. The [Employment & Labor Practice Group](#) at [Partridge Snow & Hahn](#) is fully updated on this and other related issues and are available to answer your questions.

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