



PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Repeals definition of "system" to implement OL CH. 617 (2019)

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RULE SUMMARY: Implements changes made by OL. CH. 617 (2019): Repeals definition of "system".

CHANGES TO RULE:

839-008-0015

Bona Fide Factors that May Be Considered in Paying Employees Performing Work of Comparable Character at Different Compensation Levels

~~(1)~~ Pursuant to ORS 652.220(2), employees may receive different levels of compensation for work of comparable character if the entire compensation differential is based on one or more bona fide factors related to the position in question. The bona fide factors that may be considered in determining the compensation differential between individuals are as follows: ¶

~~(a)~~ 1 A seniority system that recognizes and compensates employees based on length of service with the employer. A seniority system utilized by an employer may be considered as a bona fide factor by the employer's successor in interest, as defined by OAR 839-005-0014; ¶

~~(b)~~ 2 A merit system that provides for variations in pay based upon employee performance as measured through job-related criteria, for example, a written performance evaluation plan or policy that measures employee performance using a set numerical or other established rating scale, such as from "unsatisfactory" to "exceeds expectations," and takes employees' ratings into account in determining employee pay rates; ¶

~~(c)~~ 3 A system that measures earnings by quantity or quality of production, including piece rate work; ¶

~~(d)~~ 4 Notwithstanding any other applicable federal, state or local laws, workplace location considerations may include, but are not limited to, the following: ¶

~~(A)~~ a Cost of living; ¶

~~(B)~~ b Desirability of worksite location; ¶

~~(C)~~ c Access to worksite location; ¶

~~(D)~~ d Minimum wage zones; or ¶

~~(E)~~ e Wage and hour zones. ¶

~~(e)~~ 5 Necessary and regular travel; ¶

(f) Education considerations may include, but are not limited to, substantive knowledge acquired through relevant coursework, as well as any completed certificate or degree program; ¶

(g) Training considerations may include, but are not limited to, on-the-job training acquired in current or past positions as well as training acquired through a formal training program; ¶

(h) Experience considerations include, but are not limited to, any relevant experience that may be applied to the particular job; or ¶

(i) Any combination of the factors described in subsections (a)-(h) of this section, if the combination of those factors accounts for the entire compensation differential. ¶

(2) As used in subsections (1)(a)-(c) of this rule, "system" means a devised coherent, consistent, verifiable and reasonable method that was in use at the time of the alleged violation to identify, measure and apply appropriate variables in an orderly, logical and effective manner.

Statutory/Other Authority: ORS 659A.805

Statutes/Other Implemented: OL CH. 617 (2019), ORS 652.220