



Washington State
DEPARTMENT OF
ENTERPRISE SERVICES

Pay Equality Contract Amendment Provision

Frequently Asked Questions (FAQ)

Question 1.

Is the pay equality provision required for all master/statewide contracts and all cooperative purchasing agreements?

Answer: Yes. The Washington state Legislature required DES to amend all 'enterprise procurement solutions' for goods/services (i.e., master/state contracts and cooperative purchasing agreements) to include the pay equality provision.

Question 2.

Is this a new requirement?

Answer: It is a new *contract* requirement, but it is *not a new obligation*. As you may know, Washington state law requires pay equality. The Washington state Legislature first enacted the Equal Pay Act in 1943. See [Laws of 1943, ch. 254](#) (formerly codified at RCW 49.12.175). The Equal Pay Act made it a misdemeanor offense for employers to pay any female less than similarly employed males. In 2018, the legislature enacted the Washington Equal Pay and Opportunities Act. See [Laws of 2018, ch. 116](#) (codified as [RCW 49.58](#)). This legislation, designed to achieve gender pay equity, amended and recodified the Equal Pay Act.

As a contracting and procurement matter, the state legislature is requiring that, in spending taxpayer money for goods/services, the State of Washington expects its contractors to pay its 'similarly employed individuals' equally. Accordingly, the state legislature is requiring DES to amend existing contracts to include the pay equality provision. See [Laws of 2023, ch. 475](#), § 919(4).

Question 3.

If Washington state law already prohibits gender-based pay discrimination, why does the contract need to be amended to include the pay equality provision?

Answer: It is not uncommon for the Washington State Legislature to require that the state's contracts include certain requirements that, substantively, already may exist as state statutes. Typically, the legislature does this for two reasons. First, to clearly state expectations in the state's contracts. Second, and more importantly, although there are significant consequences for violations of the pay equality statute, the consequences do not include contract termination (if the party violating the statute has a state contract). Accordingly, as a matter of policy, it appears that the state legislature desires to ensure that, in addition to existing consequences for pay discrimination, the state would have the ability to terminate its contracts if the contractor engages in prohibited conduct.

Question 4.

Is 'similarly employed' defined?

Answer: Yes. The legislation provides as follows: Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. See [Laws of 2023, ch. 475](#), § 919(1)(a).

Question 5.

Are there any exceptions to pay equality?

Answer: Yes. The legislation provides as follows:

(b) Vendors [Contractors] may allow differentials in compensation for their workers based in good faith on any of the following: A seniority system, a merit system, a system that measures earnings by quantity or quality of production, a bona fide job-related factor or factors, or a bona fide regional difference in compensation levels.

(c) A bona fide job-related factor or factors may include, but is not limited to, education, training, or experience, that is consistent with business necessity, not based on or derived from a gender-based differential, and accounts for the entire differential.

(d) A bona fide regional difference in compensation level must be consistent with business necessity, not based on or derived from a gender-based differential, and account for the entire differential.

See [Laws of 2023, ch. 475](#), § 919(1)(b) – (d).

Question 6.

Does the pay equality contract requirement apply to subcontractors?

Answer: Yes. If a contractor, consistent with the contract, chooses to utilize subcontractors to perform the contract, the contractor is responsible to ensure that it utilizes subcontractors who comply with the contract terms and conditions, including the pay equality provision.

Question 7.

If I have other questions, is there someone I may contact?

Answer: Yes. Each of our contracts includes a designated contact for questions, concerns, or issues about the contract. You can find that information in the contract where it says 'contract administration' or by searching our contract database for your contract: [contract search \(wa.gov\)](#). In addition, when you receive the amendment, it will come from our assigned team member for your contract.