

# Equal Pay And Opportunities Act (EPOA) — RCW 49.58

*L&I Office of Human Resources compensation guidance*



## Beginning July 28, 2019, the following changes will take effect:

- You **may not** seek the salary history from the applicant, or their current or former employer, unless:
  1. The applicant voluntarily discloses their salary;
  2. You have negotiated and made a job offer, including the amount of compensation, to the applicant.
- You **may not** require applicants to provide their current or prior salary when determining their salary at L&I.
- You **may not** require employees to sign waivers or other documents that prevent them from disclosing their salary.
- Employees **are not** required to disclose their current or past salary.
- Post offer, and upon the applicant's request, L&I **must** provide the minimum wage or salary of the position for which they are applying. *(It is our practice to post the minimum and maximum salary on each job announcement.)*
- When a current employee is offered an internal transfer, a new position or a promotion, L&I **must** provide the new job's wage scale or salary range if the employee requests it.

## Key recommendations to follow:

- **Do not** seek an applicant or candidate salary history. *Caution: seeking this information may cause or continue to create pay disparities between genders, and other protected classes.*
- Work with your recruiter to ensure the full salary range is included on all job postings.
- Document all salary negotiations and offers for applicants. Employers carry the burden of proof to explain why compensation differences exist so make sure you **document**.
- Even though you can't ask for an applicant or a current employee's past salary, you **may not** stop them from disclosing, comparing, or discussing their wages.

## How To Set Salary

Hiring managers should follow these basic guidelines when setting salaries for employees.

### You **CAN** base your employee's salary on:

- Seniority
- Education
- Training
- Experience
- Regional differences
- Quantity/quality of production
- Merit/quality of work

### You **CANNOT** base your employee's salary on:

- Past salary
- Gender

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## Washington General Service (WGS)

When offering a position to a current WGS state employee, we must adhere to our collective bargaining agreements. Therefore, you can offer, negotiate, and come to an agreement on a salary increase percentage. See the scenarios below for examples.

- After the salary negotiation is completed and the appointment is sent to OHR for processing, OHR may seek an applicant or employee's salary, specifically when needed to follow the rules of promotion.
- At this point in the process, **you can** contact HR to confirm the current salary and determine the new salary.

- Offering a salary that is above the minimum percentage required must still be approved by your appointing authority and the justification for the salary offer should be documented.

## Washington Management Service (WMS)

When offering a WMS position, you should negotiate and come to an agreement on a salary amount. You should **not** come to an agreement on a salary increase percentage. Please contact your Human Resource Consultant for assistance in setting WMS salaries.

## Employee Hiring Scenarios

### New employee to Washington State Service

**Rule:** WFSE CBA Article 42.8, the employer will assign newly hired employees to the appropriate range and step.

**What salary setting looks like in practice:** The supervisor cannot seek the applicant's salary. The supervisor will offer a step within the range that is commensurate with the employee's education, experience, knowledge, skills, and abilities, and document the justification for the salary offer.

A highly qualified candidate should be offered at a middle or higher step in the range, whereas an entry level applicant might be offered the low end of the range.

**Conclusion:** Supervisor determines the applicant is highly experienced. The interview process further supports the applicant is ready to come into the job and hit the ground running. The supervisor is excited and does not want to lose the applicant. The supervisor offers step K, which is higher on the pay scale, and still allows for growth.

### Promoting WCA 3 to WCA 4

**Rule:** WFSE CBA Article 42.10, depending on the percentage between the salary range of the employee's current job class maximum (Step L) and new job class maximum, the promotional increase will be a step in the new range that is nearest to 5% or 10%.

**What salary setting looks like in practice:** The supervisor cannot seek the employee's salary, however, the supervisor does know the employee's current job class and the job class of the position being offered; therefore according to the CBA rules of promotion, the employee is entitled to a 5% increase.

**Conclusion:** The percentage between the range maximum of the WCA3 and WCA4 is 5%. Therefore the promotional increase should be nearest to 5%. This is why during salary negotiations, the supervisor may offer a salary that is 5% more than the employee's current salary. *Example: "Congratulations Pat...You're my top candidate. I can offer you a 5% increase from what your current salary is, so long as 5% doesn't exceed Step L."* Keep in mind, the supervisor does not actually know the employee's salary. At this point, negotiations by the employee can occur, and anything higher than the minimum 5% will require appointing authority approval and the justification for the salary offer should be documented.

### Appointment from Washington General Service (WGS) to Washington Management Service (WMS)

**Rule:** L&I WMS Policy and Guidelines

**What salary setting looks like in practice:** The supervisor cannot seek the employee's salary, however, the supervisor does know where the employee's current job class tops out; what the subordinate's job class tops out at; what the salary ranges of consideration are for the similar positions.

WMS salary setting rules of thumb:

- Give a salary that prevents compression with the subordinates.
- Use the midpoint of the range of consideration as a starting point for an employee who will come into the job at the journey-level.

**Conclusion:** The hiring supervisor contacts Human Resources and discusses salary placement options. The hiring supervisor, with hiring authority approval, decides the employee is journey-level. They consider the similarly banded positions, and the maximum salary of the position's subordinates. The result is an offer slightly higher than the midpoint of the range of consideration. At this point, negotiations by the employee can occur.