



September 16, 2022

Washington State Department of Labor & Industries
ATTN: Bridget Osborne – Policy Analyst
PO Box 44510
Olympia, WA 98504-4510

RE: Comments ES.E.1 – Equal Pay and Opportunities Act

Dear Ms. Osborne,

Thank you for accepting comments on the above-referenced policy document. These comments are based on the August 22 draft policy.

Wafla is a non-profit 501(c)(6) membership organization comprised of nearly 800 agricultural and seasonal employers. Wafla was formed to make labor stability a reality for all agricultural employers and for farmers and farmworkers to be treated with dignity and respect. We offer ways for our members to access several federal visa programs and receive assistance complying with state and federal labor standards.

In 2021, wafla filed H-2A applications for more than 200 member employers who collectively employed more than 16,000 individual H-2A workers. In addition, wafla employer members employed more than 20,000 domestic workers.

We have comments on several sections of this proposed policy.

Page 5, Section 5.1 Wage Scale or Salary Range

- Can an employer and potential employee negotiate outside of the wage range listed on the job announcement? For example, during the interview and hiring process, a potential employee may ask for more compensation than is listed in the job announcement. Is negotiating and accepting compensation outside of the listed wage range allowed?
- Is it acceptable for an employer to list a single hourly rate as both the minimum and maximum? For example, an employer hiring H-2A workers would most likely list the federally mandated adverse effect wage rate. In this circumstance, this rate serves as both the minimum and maximum hourly wage rate. Is a single rate acceptable for the requirements of the state statute and policy? Is it sufficient to say, "This job pays X dollars per hour," or must the flat rate per hour be listed as both the minimum and maximum rate to satisfy the disclosure requirements in the law?

Page 7, Section 5.3 General Description of Other Compensation

- It appears that discretionary bonuses are included in the definition of "other compensation." This inclusion perplexes us. Discretionary bonuses are "given without any prior contract, agreement, or

promise (express or implied), causing the employee to expect the bonus” (see L&I Administrative Policy ES.C.6.2 Agricultural Labor Standards – Meal Periods, Rest Periods, and Rates of Pay, page 8, number 15). Discretionary bonuses may not be known, even to an agricultural employer, before and during the hiring process. We do not believe discretionary bonuses should be included in the definition of compensation for purposes of this administrative policy.

- It does not appear that non-discretionary bonuses are included in the definition of compensation in this draft policy, as they are not specifically called out in the definition of “other compensation.” We agree that they should not be considered compensation to be disclosed in a job announcement. In agriculture, non-discretionary bonuses can vary dramatically based on numerous factors such as weather, crop size, crop quality, and market conditions. These factors and the bonuses they are based on are not known and are not knowable before seasonal employees are hired. These factors are not usually known until crops are harvested, which is after seasonal workers are hired. At the time of a job announcement, the employer almost always does not know if an end-of-season bonus will be given to each worker and how much that bonus will be.
- For both non-discretionary and discretionary bonuses in agriculture, unknown and unknowable future variables make it difficult for the employer to properly account for an expected minimum and maximum compensation range. Therefore, we believe both types of bonuses should not be mandatorily included in the wage ranges addressed in this administrative policy.

Thank you again for the opportunity to comment on this draft policy. If you have questions or need clarification about these comments, feel free to contact me. We are always available to collaborate and ensure that state policies are appropriate and easily understood by agricultural employers, employees, and the department.

Sincerely,



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