

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 391 (Delegate Rosenberg, *et al.*)  
Health and Government Operations

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**Civil Rights - Employment Discrimination - Employees Inquiring About,  
Discussing, or Disclosing Wages**

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This bill establishes that an employer may not prohibit an employee from inquiring about discussing, or disclosing the wages of the employee or another employee. The prohibition does not apply to an employee who has access to wage information as part of the employee's essential job functions and discloses the wages to an individual who does not otherwise have access to the wage information, unless the disclosure is in response to a complaint or charge, or in furtherance of an investigation, proceeding, hearing, or an action relating to discrimination, including an investigation by an employer. The bill also establishes provisions relating to a written policy that employers may provide regarding inquiries, discussions, or disclosures of wages.

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**Fiscal Summary**

**State Effect:** The Maryland Commission on Civil Rights can handle any additional complaints using existing resources. The Department of Budget and Management reports that because all State employee salaries are public information, there is no impact on the State Personnel System.

**Local Effect:** The bill does not materially impact local government operations or finances.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** An employer may establish a written policy for all employees that (1) sets forth reasonable workplace and workday limitations on the time, place, and manner of inquiries, discussions, or disclosures of wages and (2) is consistent with all other State and federal laws. A written policy may prohibit an employee from discussing or disclosing the wages of another employee without the permission of the other employee.

The failure of an employee to comply with a written policy established in accordance with the bill is an affirmative defense to any claim of an unlawful employment practice against an employer that an adverse employment action was taken by the employer, if the adverse employment action was taken for failure of an employee to comply with the written policy and not for mere inquiry, discussion, or disclosure of wages in accordance with the written policy. The bill's provisions do not require an employee to disclose the wages of the employee or limit the rights of an employee provided under any other provision of law or collective bargaining agreement.

**Current Law:** Discrimination in employment based on an individual's race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability is prohibited. This includes discrimination by employers with 15 or more employees, employment agencies, labor organizations, and training programs.

An unlawful employment practice occurs, with respect to discrimination in compensation, when (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to a discriminatory compensation decision or practice; or (3) an individual is affected by application of a discriminatory compensation or other practice, including each time wages, benefits, or other compensation is paid, resulting wholly or partly from the discriminatory compensation decision or practice.

**Background:** The bill is modeled after provisions within the Women's Equality Act, which was introduced in the New York Legislature in June 2013. According to the New York Women's Equality Coalition, 61% of private-sector employees in the United States report that they are discouraged or prohibited from discussing wage and salary information. A similar proposal regarding wage transparency at the federal level, the Paycheck Fairness Act, most recently introduced in 2013 during the 113<sup>th</sup> Congress, would prohibit retaliation for inquiring about, discussing, or disclosing the wages of the employee or another employee in response to a complaint or charge, or in furtherance of a sex discrimination investigation, proceeding, hearing, or action, or an investigation conducted by the employer.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Budget and Management; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Montgomery, Washington, and Worcester counties; New York Women's Equality Coalition; Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2014  
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