

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 425
Finance

(Senator Lee)

Labor and Employment - Wage Disclosure and Discussion Protection

This bill prohibits an employer from prohibiting an employee from inquiring about, discussing, or disclosing the wages of the employee or another employee or requesting that the employer provide a reason for why the employee's wages are a condition of employment.

The bill applies only prospectively and may not be interpreted to apply or have any effect on or application to any cause of action arising before the bill's effective date.

Fiscal Summary

State Effect: The Department of Labor, Licensing, and Regulation (DLLR) can handle the bill's requirements with existing resources. Any increase in caseloads for the Office of the Attorney General and the District Court is not expected to affect State expenditures. Potential minimal increase in general fund revenues due to the bill's penalties provisions.

Local Effect: The bill does not materially affect local governmental operations or finances because relatively few cases should be heard in the circuit courts and salaries of local governmental employees are public information.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An employer may not require an employee to sign a waiver or any other document to deny the employee the right to disclose or discuss the employee's wages.

An employer may not take any adverse employment action against an employee for specified actions regarding wages or exercising specified rights.

An employer may, in a written policy provided to each employee, establish reasonable workday limitations on the time, place, and manner for inquiries relating to employee wages so long as it is consistent with standards adopted by the Commissioner of Labor and Industry and all other State and federal laws. If an employee does not adhere to these limitations, an employer may take adverse employment action. A limitation may include prohibiting an employee from discussing or disclosing another employee's wages without that employee's prior permission, except in specified instances for an employee who has access to other employees' wage information as a part of the employee's essential job functions.

The bill does not (1) require an employee to disclose the employee's wages; (2) diminish employee rights to negotiate the terms and conditions of employment or otherwise limit employee rights; (3) create an obligation on an employer or employee to disclose wages; (4) permit an employee, without an employer's written consent, to disclose proprietary information, trade secret information, or information that is a legal privilege or protected by law; or (5) permit an employee to disclose wage information to an employer's competitor.

The Commissioner of Labor and Industry must provide without charge a copy of the bill's provisions to an employer upon request, and each employer must keep posted conspicuously in each place employment a copy of the bill's provisions. The commissioner must develop educational materials and make training available to assist employers in adopting training, policies, and procedures that comply with the bill's requirements.

When the commissioner has determined that a provision of the bill has been violated, the commissioner must (1) try to resolve any issue informally by mediation or (2) ask the Attorney General to bring an action on behalf of the employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

If an employer violates the bill's provisions, an affected employee may bring an action against the employer for injunctive relief and to recover both actual damages and up to three times the total amount of wages found to be due in liquidated damages. An employee may bring an action on behalf of the employee and other employees similarly affected. An action must be filed within three years after the occurrence of the act on which the action is based.

Upon written request of an employee, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate two or more claims against an employer.

If a court determines that an employee is entitled to judgment in an action, the court must allow against the employer reasonable counsel fees and other costs of the action, as well as prejudgment interest in accordance with the Maryland Rules.

An employer may not (1) willfully violate any provision of the bill; (2) hinder, delay, or otherwise interfere with the commissioner in enforcing the bill; or (3) refuse the commissioner entry into a place of employment that the commissioner is authorized to inspect. An employer may not discharge or otherwise discriminate against an employee for specified actions.

An employee may not (1) make a groundless or malicious complaint to the commissioner or (2) in bad faith, bring an action or proceeding, or testify in an action or proceeding under the bill. The commissioner may bring an action for injunctive relief and damages against a person who violates specified provisions of the bill. An employer who violates specified provisions of the bill is guilty of a misdemeanor and on conviction is subject to a maximum \$300 fine.

Current Law: No current law exists relating to protecting employees' rights to inquire about wages.

State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. The State and local governments are considered employers.

Regardless of employer size, under the State's Equal Pay for Equal Work law, an employer may not discriminate between employees in any occupation by paying a wage to employees of one sex at a rate less than the rate paid to employees of the opposite sex if both employees work in the same establishment and perform work of comparable character or work on the same operation, in the same business, or of the same type. An employee may bring an action against an employer that violates this law.

Background: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently \$7.25 per hour, or \$8.00 per hour, phasing up to \$10.10 per hour beginning July 1, 2018.

The State and local governments are considered employers under the Wage and Hour Law. A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

State Expenditures: The Division of Labor and Industry within DLLR must develop training materials, which can be done with existing resources. It can also investigate potential violations of the bill by employees and employers with existing resources as the number of complaints is not expected to be significant. Any increase in legal action arising from the bill is not expected to have a material effect on caseloads in the Office of the Attorney General or the District Court and, therefore, has no material effect on State expenditures.

The Maryland Public Information Act gives the public the right to access government records, including salaries of governmental employees, without unnecessary cost and delay. Thus, the wage disclosure provisions of the bill do not have a material effect on the State because State employees' salaries are already public information.

Small Business Effect: While the bill prohibits an employer from taking any adverse employment action against an employee for specified actions relating to inquiring, disclosing, or discussing wages, the bill does not create an obligation on an employer or employee to disclose wages. To the extent that employees gather more information on wages, the bill may create pressure on an employer to decrease wage disparities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Somerset counties; cities of Frederick and Havre de Grace; Office of the Attorney General; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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