

Chapter 557

(House Bill 1003)

AN ACT concerning

Labor and Employment – Equal Pay for Equal Work

FOR the purpose of altering a certain provision of law concerning equal pay for equal work to prohibit discrimination on the basis of gender identity; prohibiting an employer from discriminating between employees in any occupation by providing certain less favorable employment opportunities based on sex or gender identity; providing that, for purposes of certain provisions of law concerning equal pay for equal work, an employee shall be deemed to work in the same establishment as another employee if the employees work at workplaces in the same county of the State; providing that a certain provision of law does not prohibit a certain variation based on a certain system or bona fide factor; ~~providing that certain exceptions do not apply under certain circumstances;~~ providing that certain provisions of this Act do not preclude an employee from demonstrating that an employer's reliance on a certain exception is a pretext for certain discrimination; prohibiting an employer from taking certain actions concerning the disclosure or discussion of an employee's wages; authorizing an employer, in a certain policy, to establish certain limitations on certain inquiries about or discussions or disclosures of wages; providing that, under certain circumstances, the failure of an employee to adhere to certain limitations shall be an affirmative defense against certain claims; providing that a certain employer prohibition against the disclosure of certain wage information may not apply under certain circumstances; providing for the construction of certain provisions of this Act; requiring the Commissioner of Labor and Industry, in consultation with the Maryland Commission on Civil Rights, to develop certain educational materials and make certain training available for certain purposes; altering a certain provision of law to allow a certain employee to bring a certain action for injunctive relief and to recover the difference paid between employees of one sex or gender identity and employees of another sex or gender identity who do ~~work of a comparable nature or the same type of work~~ against an employer who knew or reasonably should have known that the employer's action violates a certain provision of law; authorizing a certain employee to bring a civil action against an employer who knew or reasonably should have known that the employer's action violates a certain provision of law to recover certain damages for a violation of a certain provision of this Act; ~~authorizing the trier of fact to award certain liquidated damages under certain circumstances;~~ ~~authorizing the Attorney General, on a certain written request, to bring an action on behalf of an employee and consolidate certain claims against an employer;~~ altering a certain provision of law to require that a certain action be filed within a certain time period after the discovery of a certain act employee receives from the employer the wages paid on the termination of employment under a certain provision of law; authorizing a court to award certain prejudgment interest under certain circumstances; ~~authorizing the Attorney General to bring an action for injunctive relief and damages against a person who violates certain provisions of this Act;~~

defining ~~a certain term~~; certain terms; making conforming changes; providing for the application of this Act; and generally relating to equal pay for equal work and the disclosure of certain wage information by certain employees.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section ~~3–301, 3–304, 3–306, 3–307, and 3–308~~ and 3–307

Annotated Code of Maryland

(2008 Replacement Volume and 2015 Supplement)

BY adding to

Article – Labor and Employment

Section 3–304.1

Annotated Code of Maryland

(2008 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, without amendments,

Article – Labor and Employment

Section 3–308

Annotated Code of Maryland

(2008 Replacement Volume and 2015 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

3–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Employer” means:

(i) a person engaged in a business, industry, profession, trade, or other enterprise in the State;

(ii) the State and its units;

(iii) a county and its units; and

(iv) a municipal government in the State.

(2) “Employer” includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) “GENDER IDENTITY” HAS THE MEANING STATED IN § 20-101 OF THE STATE GOVERNMENT ARTICLE.

(D) (1) “Wage” means all compensation for employment.

(2) “Wage” includes board, lodging, or other advantage provided to an employee for the convenience of the employer.

3-304.

(a) ~~(1)~~ IN THIS SECTION, “PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES” MEANS:

(1) ASSIGNING OR DIRECTING THE EMPLOYEE INTO A LESS FAVORABLE CAREER TRACK, IF CAREER TRACKS ARE OFFERED, OR POSITION;

~~(2) “PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES” INCLUDES:~~

~~(1)~~ (2) FAILING TO PROVIDE INFORMATION ABOUT PROMOTIONS OR ADVANCEMENT IN THE FULL RANGE OF CAREER TRACKS OFFERED BY THE EMPLOYER; OR

~~(1)~~ ~~ASSIGNING WORK LESS LIKELY TO LEAD TO PROMOTION OR FUTURE OPPORTUNITIES.~~

(3) LIMITING OR DEPRIVING AN EMPLOYEE OF EMPLOYMENT OPPORTUNITIES THAT WOULD OTHERWISE BE AVAILABLE TO THE EMPLOYEE BUT FOR THE EMPLOYEE’S SEX OR GENDER IDENTITY.

(B) (1) An employer may not discriminate between employees in any occupation by:

(I) paying a wage to employees of one sex OR GENDER IDENTITY at a rate less than the rate paid to employees of [the opposite] ANOTHER sex OR GENDER IDENTITY 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; OR

(II) PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES BASED ON SEX OR GENDER IDENTITY.

(2) FOR PURPOSES OF PARAGRAPH (1)(I) OF THIS SUBSECTION, AN EMPLOYEE SHALL BE DEEMED TO WORK AT THE SAME ESTABLISHMENT AS ANOTHER

EMPLOYEE IF THE EMPLOYEES WORK FOR THE SAME EMPLOYER AT WORKPLACES LOCATED IN THE SAME COUNTY OF THE STATE.

[(b)] (C) [Subsection (a)] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, SUBSECTION (B) of this section does not prohibit a variation in a wage that is based on:

(1) a seniority system that does not discriminate on the basis of sex OR GENDER IDENTITY;

(2) a merit increase system that does not discriminate on the basis of sex OR GENDER IDENTITY;

(3) jobs that require different abilities or skills;

(4) jobs that require the regular performance of different duties or services;
[or]

(5) work that is performed on different shifts or at different times of day;

(6) A SYSTEM THAT MEASURES PERFORMANCE BASED ON A QUALITY OR QUANTITY OF PRODUCTION; OR

(7) A BONA FIDE FACTOR OTHER THAN SEX OR GENDER IDENTITY, INCLUDING EDUCATION, TRAINING, OR EXPERIENCE, IN WHICH THE FACTOR:

(I) IS NOT BASED ON OR DERIVED FROM A GENDER-BASED DIFFERENTIAL IN COMPENSATION;

(II) IS JOB RELATED WITH RESPECT TO THE POSITION AND CONSISTENT WITH A BUSINESS NECESSITY; AND

(III) ACCOUNTS FOR THE ENTIRE DIFFERENTIAL.

~~(D) AN EXCEPTION LISTED IN SUBSECTION (C) OF THIS SECTION DOES NOT APPLY IF THE EMPLOYEE DEMONSTRATES THAT:~~

~~(1) THE EMPLOYER USES A PARTICULAR EMPLOYMENT PRACTICE THAT CAUSES A DISPARATE IMPACT ON THE BASIS OF SEX OR GENDER IDENTITY;~~

~~(2) ALTERNATIVE EMPLOYMENT PRACTICES EXIST THAT WOULD SERVE THE SAME BUSINESS AND NOT PRODUCE THE DISPARATE IMPACT; AND~~

~~(3) THE EMPLOYER HAS REFUSED TO ADOPT AN ALTERNATIVE PRACTICE~~ THIS SECTION DOES NOT PRECLUDE AN EMPLOYEE FROM DEMONSTRATING THAT AN EMPLOYER'S RELIANCE ON AN EXCEPTION LISTED IN SUBSECTION (C) OF THIS SECTION IS A PRETEXT FOR DISCRIMINATION ON THE BASIS OF SEX OR GENDER IDENTITY.

[(c)] (E) An employer who is paying a wage in violation of this subtitle may not reduce another wage to comply with this subtitle.

3-304.1.

(A) AN EMPLOYER MAY NOT:

(1) PROHIBIT AN EMPLOYEE FROM:

(I) INQUIRING ABOUT, DISCUSSING, OR DISCLOSING THE WAGES OF THE EMPLOYEE OR ANOTHER EMPLOYEE; OR

(II) REQUESTING THAT THE EMPLOYER PROVIDE A REASON FOR WHY THE EMPLOYEE'S WAGES ARE A CONDITION OF EMPLOYMENT;

(2) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR ANY OTHER DOCUMENT THAT PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE OR DISCUSS THE EMPLOYEE'S WAGES; OR

(3) TAKE ANY ADVERSE EMPLOYMENT ACTION AGAINST AN EMPLOYEE FOR:

(I) INQUIRING ABOUT ANOTHER EMPLOYEE'S WAGES;

(II) DISCLOSING THE EMPLOYEE'S OWN WAGES;

(III) DISCUSSING ANOTHER EMPLOYEE'S WAGES IF THOSE WAGES HAVE BEEN DISCLOSED VOLUNTARILY;

(IV) ASKING THE EMPLOYER TO PROVIDE A REASON FOR THE EMPLOYEE'S WAGES; OR

(V) AIDING OR ENCOURAGING ANOTHER EMPLOYEE'S EXERCISE OF RIGHTS UNDER THIS SECTION.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER MAY, IN A WRITTEN POLICY PROVIDED TO EACH EMPLOYEE, ESTABLISH

REASONABLE WORKDAY LIMITATIONS ON THE TIME, PLACE, AND MANNER FOR INQUIRIES ABOUT OR THE DISCUSSION OR DISCLOSURE OF EMPLOYEE WAGES.

(2) A LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONSISTENT WITH STANDARDS ADOPTED BY THE COMMISSIONER AND ALL OTHER STATE AND FEDERAL LAWS.

(3) SUBJECT TO SUBSECTION (D) OF THIS SECTION, LIMITATIONS ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE PROHIBITING AN EMPLOYEE FROM DISCUSSING OR DISCLOSING THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR PERMISSION.

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE FAILURE OF AN EMPLOYEE TO ADHERE TO A REASONABLE LIMITATION INCLUDED IN A WRITTEN POLICY UNDER SUBSECTION (B) OF THIS SECTION SHALL BE AN AFFIRMATIVE DEFENSE TO A CLAIM MADE AGAINST AN EMPLOYER BY THE EMPLOYEE UNDER THIS SECTION IF THE ADVERSE EMPLOYMENT ACTION TAKEN BY THE EMPLOYER WAS FOR A FAILURE TO ADHERE TO THE REASONABLE LIMITATION AND NOT FOR AN INQUIRY, A DISCUSSION, OR A DISCLOSURE OF WAGES IN ACCORDANCE WITH THE LIMITATION.

(D) (1) A PROHIBITION ESTABLISHED IN ACCORDANCE WITH SUBSECTION (B)(3) OF THIS SECTION AGAINST THE DISCUSSION OR DISCLOSURE OF THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR PERMISSION MAY NOT APPLY TO INSTANCES IN WHICH AN EMPLOYEE WHO HAS ACCESS TO THE WAGE INFORMATION OF OTHER EMPLOYEES AS A PART OF THE EMPLOYEE'S ESSENTIAL JOB FUNCTIONS IF THE DISCUSSION OR DISCLOSURE IS IN RESPONSE TO A COMPLAINT OR CHARGE OR IN FURTHERANCE OF AN INVESTIGATION, A PROCEEDING, A HEARING, OR AN ACTION UNDER THIS SUBTITLE, INCLUDING AN INVESTIGATION CONDUCTED BY THE EMPLOYER.

(2) IF AN EMPLOYEE WHO HAS ACCESS TO WAGE INFORMATION AS PART OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB DISCLOSES THE EMPLOYEE'S OWN WAGES OR WAGE INFORMATION ABOUT ANOTHER EMPLOYEE OBTAINED OUTSIDE THE PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB, THE EMPLOYEE SHALL BE ENTITLED TO ALL THE PROTECTIONS AFFORDED UNDER THIS SUBTITLE.

(E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

(1) REQUIRE AN EMPLOYEE TO DISCLOSE THE EMPLOYEE'S WAGES;

(2) DIMINISH EMPLOYEES' RIGHTS TO NEGOTIATE THE TERMS AND CONDITIONS OF EMPLOYMENT UNDER FEDERAL, STATE, OR LOCAL LAW;

(3) LIMIT THE RIGHTS OF AN EMPLOYEE PROVIDED UNDER ANY OTHER PROVISION OF LAW OR COLLECTIVE BARGAINING AGREEMENT;

(4) CREATE AN OBLIGATION ON ANY EMPLOYER OR EMPLOYEE TO DISCLOSE WAGES;

(5) PERMIT AN EMPLOYEE, WITHOUT THE WRITTEN CONSENT OF AN EMPLOYER, TO DISCLOSE PROPRIETARY INFORMATION, TRADE SECRET INFORMATION, OR INFORMATION THAT IS OTHERWISE SUBJECT TO A LEGAL PRIVILEGE OR PROTECTED BY LAW; OR

(6) PERMIT AN EMPLOYEE TO DISCLOSE WAGE INFORMATION TO A COMPETITOR OF THE EMPLOYER.

3-306.

(a) On request of an employer, the Commissioner shall provide without charge a copy of this subtitle to the employer.

(b) Each employer shall keep posted conspicuously in each place of employment a copy of this subtitle.

(c) THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND COMMISSION ON CIVIL RIGHTS, SHALL DEVELOP EDUCATIONAL MATERIALS AND MAKE TRAINING AVAILABLE TO ASSIST EMPLOYERS IN ADOPTING TRAINING, POLICIES, AND PROCEDURES THAT COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE.

3-307.

(a) (1) If an employer ***KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE EMPLOYER'S ACTION*** violates § 3-304 OF this subtitle, an affected employee may bring an action against the employer **FOR INJUNCTIVE RELIEF AND** to recover the difference between the wages paid to [male and female] employees **OF ONE SEX OR GENDER IDENTITY AND THE WAGES PAID TO EMPLOYEES OF ANOTHER SEX OR GENDER IDENTITY** who do ~~WORK OF COMPARABLE NATURE OR~~ the same type work and an additional equal amount as liquidated damages.

(2) IF AN EMPLOYER ***KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE EMPLOYER'S ACTION*** VIOLATES § 3-304.1 OF THIS SUBTITLE, AN AFFECTED EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER FOR

INJUNCTIVE RELIEF AND TO RECOVER BOTH ACTUAL DAMAGES AND AN ADDITIONAL EQUAL AMOUNT AS LIQUIDATED DAMAGES.

~~(3) IN AWARDING LIQUIDATED DAMAGES UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION, A TRIER OF FACT MAY AWARD, IN THE CASE OF A WILLFUL VIOLATION OF THIS SUBTITLE, AN AMOUNT UP TO THREE TIMES THE TOTAL AMOUNT OF THE WAGES FOUND TO BE DUE.~~

~~(2)~~ (4) An employee ~~OR THE ATTORNEY GENERAL~~ may bring an action on behalf of the employee and other employees similarly affected.

(b) On the written request of an employee who is entitled to bring an action under this section, the Commissioner may:

- (1) take an assignment of the claim in trust for the employee;
- (2) ask the Attorney General to bring an action in accordance with this section on behalf of the employee; and
- (3) consolidate 2 or more claims against an employer.

~~(c) ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED TO BRING AN ACTION UNDER THIS SECTION, THE ATTORNEY GENERAL MAY:~~

~~(1) BRING AN ACTION IN ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND~~

~~(2) CONSOLIDATE 2 OR MORE CLAIMS AGAINST AN EMPLOYER.~~

~~(d)~~ An action under this section shall be filed within 3 years ~~of~~ AFTER the ~~DISCOVERY OF THE~~ act on which the action is based EMPLOYEE RECEIVES FROM THE EMPLOYER THE WAGES PAID ON THE TERMINATION OF EMPLOYMENT UNDER § 3-505(A) OF THIS TITLE.

~~(d)~~ (e) The agreement of an employee to work for less than the wage to which the employee is entitled under this subtitle is not a defense to an action under this section.

~~(e)~~ (f) If a court determines that an employee is entitled to judgment in an action under this section, the court shall allow against the employer reasonable counsel fees and other costs of the action, **AS WELL AS PREJUDGMENT INTEREST IN ACCORDANCE WITH THE MARYLAND RULES.**

(a) An employer may not:

(1) willfully violate any provision of this subtitle;

(2) hinder, delay, or otherwise interfere with the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

(3) refuse entry to the Commissioner or an authorized representative of the Commissioner into a place of employment that the Commissioner is authorized under this subtitle to inspect; or

(4) discharge or otherwise discriminate against an employee because the employee:

(i) makes a complaint to the employer, the Commissioner, or another person;

(ii) brings an action under this subtitle or a proceeding that relates to the subject of this subtitle or causes the action or proceeding to be brought; or

(iii) has testified or will testify in an action under this subtitle or a proceeding that relates to the subject of this subtitle.

(b) An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle;

(3) in bad faith, bring a proceeding that relates to the subject of this subtitle; or

(4) in bad faith, testify in an action under this subtitle or a proceeding that relates to the subject of this subtitle.

(c) The Commissioner ~~OR THE ATTORNEY GENERAL~~ may bring an action for injunctive relief and damages against a person who violates subsection (a)(1) or (4) or subsection (b)(1), (3), or (4) of this section.

(d) An employer who violates any provision of subsection (a)(2) or (3) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.

Approved by the Governor, May 19, 2016.