

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 790
Economic Matters

(Delegate Queen, *et al.*)

Finance

Equal Pay for Equal Work - Enforcement - Civil Penalties (Equal Pay Remedies
and Enforcement Act)

This bill authorizes the Commissioner of Labor and Industry or a court to require an employer who violates the Equal Pay for Equal Work law at least twice within a three-year period to pay a civil penalty equal to 10% of the amount of damages owed by the employer. Civil penalties must be paid to the general fund to offset the cost of enforcing the Equal Pay for Equal Work law.

Fiscal Summary

State Effect: Since it is assumed that this bill applies in a limited number of cases, State finances are not materially affected. The bill has no fiscal impact on the State as an employer because the Department of Legislative Services assumes State agencies comply with current law.

Local Effect: The bill has no fiscal impact on local jurisdictions to the extent that they comply with current law.

Small Business Effect: Minimal.

Analysis

Current Law: Under Maryland's Equal Pay for Equal Work law, an employer may not prohibit 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. 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 actions 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, and the employer acted because of the employee's failure to adhere to the limitations, an employer may have an affirmative defense for taking 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.

These provisions do 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) limit the rights of an employee provided under any other provision of law or collective bargaining agreement; (4) create an obligation on an employer or employee to disclose wages; (5) 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 (6) permit an employee to disclose wage information to an employer's competitor.

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 (1) paying a wage to employees of one sex or gender identity at a rate less than the rate paid to employees of 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 (2) providing less favorable employment opportunities based on sex or gender identity. However, a variation in a wage based on specified systems or factors is generally not prohibited.

When the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) has determined that the State's Equal Pay for Equal Work law 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 knew or reasonably should have known that the employer's action violates Equal Pay for Equal Work provisions, an affected employee may bring an action against the employer for injunctive relief and to recover the difference between the wages paid to employees of one sex or gender identity who do the same type work and an additional equal amount as liquidated damages. If an employer knew or reasonably should have known that the employer's action violates specified wage disclosure provisions, an affected employee may bring an action against the employer for injunctive relief and to recover actual damages and an additional equal amount as liquidated damages.

An employee may bring an action on behalf of the employee and other employees similarly affected; that action must be filed within three years after the employee receives from the employer the wages paid on the termination of employment.

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 who violates certain provisions of the Equal Pay for Equal Work law is guilty of a misdemeanor and subject to a fine of up to \$300.

Background: The Employment Standards Unit within DLLR received two Equal Pay for Equal Work complaints in fiscal 2017, six complaints in fiscal 2018, and three complaints to date in fiscal 2019. DLLR advises that it has not collected any damages in the past three years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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