

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 649

(Delegate White Holland, *et al.*)

Economic Matters

Finance

**Labor and Employment - Equal Pay for Equal Work - Wage Range
 Transparency**

This bill expands the applicability, requirements, and penalties of the State’s Equal Pay for Equal Work Law. Generally, an employer must disclose specified wage, benefit, and any other compensation information in public or internal job postings and to applicants to which the job posting was not made available. The proactive disclosures have additional specified requirements and replace the existing requirement to disclose a wage range to an applicant *on request*. The wage range must be set by the employer in good faith. The Commissioner of Labor and Industry must develop and make available to employers a form that an employer may use as specified to comply with the bill. Existing retaliation provisions are updated to incorporate employee promotions or transfers. Employers must keep records of compliance with the updated requirements for at least three years, as specified.

Fiscal Summary

State Effect: General fund expenditures for the Maryland Department of Labor (MDL) increase by \$98,800 in FY 2025. Future years reflect annualization and the elimination of one-time and contractual costs. Minimal operational effects on State agencies to comply with the bill’s disclosure and recordkeeping requirements. Assuming a general level of compliance by employers, the bill’s expanded penalty provisions do not materially affect State finances or operations.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	98,800	78,400	70,600	73,600	76,800
Net Effect	(\$98,800)	(\$78,400)	(\$70,600)	(\$73,600)	(\$76,800)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government operations are affected, and expenditures may increase minimally. Revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Posting” means a solicitation intended to recruit applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party.

“Wage range” means the minimum and maximum hourly rate or minimum and maximum salary for a position, set in good faith by reference to (1) any applicable pay scale; (2) any previously determined minimum and maximum hourly rate or minimum and maximum salary for the position; (3) the minimum and maximum hourly rate or minimum and maximum salary of an individual holding a comparable position; or (4) the budgeted amount for the position.

The bill applies only with respect to a position for work that will be physically performed at least in part in the State.

Existing civil penalty violations are expanded to include penalties for each employee (in addition to each applicant) for whom the employer is not in compliance.

Current Law:

Unlawful Discrimination

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.

Equal Pay for Equal Work

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 providing less favorable employment opportunities based on sex or gender identity or 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. The State and local governments are considered employers.

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.

The Equal Pay for Equal Work law also requires an employer to provide, on request by an applicant for employment, the wage range for the position for which the applicant applied. An employer is prohibited from seeking wage history information for an applicant, or from screening or considering an applicant for employment or determining an applicant's wages based on the applicant's wage history. However, an applicant is not prohibited from voluntarily sharing wage history information with an employer. An employer may not retaliate against or refuse to interview, hire, or employ an applicant because the applicant did not provide wage history or requested the wage range.

When the Commissioner of Labor and Industry 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 applicant or employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief. An employee may bring an action against the employer under specified circumstances.

An employer may not discharge or otherwise discriminate against an employee or applicant because the employee or applicant makes a complaint, brings or causes an action or proceeding, or has testified or will testify in an action or a proceeding relating to Equal Pay for Equal Work. The commissioner may bring an action for injunctive relief and damages against a person who violates this.

State Expenditures: The bill is expected to increase the number of complaints to MDL by approximately 120 complaints per year. This cannot be absorbed within existing resources. MDL advises that it requires one wage and hour investigator to conduct investigations and one part-time contractual assistant Attorney General to assist in the process of interpreting and applying the bill. Accordingly, general fund expenditures increase by \$98,770 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Permanent Position	1.0
Contractual Position	0.5
Regular Salary and Fringe Benefits	\$48,926
Contractual Salary and Fringe Benefits	33,508
Other Operating Expenses	<u>16,336</u>
Total FY 2025 State Expenditures	\$98,770

Future year expenditures reflect the elimination of the part-time contractual position and a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

State agencies must comply with the bill’s proactive wage range disclosure requirements, for both internal and external positions, along with additional recordkeeping requirements. Most agencies advise that their recruitment policies and procedures are generally consistent with the bill’s requirements, but some need to make minor adjustments to their disclosure and recordkeeping procedures. Thus, the bill has a minimal operational impact, but no additional direct effect on State finances.

MDL delegates contested cases to the Office of Administrative Hearings, which can handle any increase in new hearings with existing resources.

Local Expenditures: Local governments must comply with the bill’s proactive wage range disclosure requirements, for both internal and external positions, along with additional recordkeeping requirements. Thus, the bill has an operational impact, and potentially a fiscal impact, on recruiting and hiring local government employees.

Small Business Effect: Small businesses must comply with the bill’s proactive wage range disclosure requirements, for both internal and external positions, along with additional recordkeeping requirements. At a minimum this creates operational effects on small businesses and may result in higher labor costs.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 832 of 2023.

Designated Cross File: SB 525 (Senators Kelly and Gile) - Finance.

Information Source(s): Baltimore City; Calvert and Prince George’s counties; Maryland Association of Counties; Maryland Municipal League; towns of Bel Air and Leonardtown; Office of the Attorney General; Comptroller’s Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Labor; Maryland Department of Transportation; Office of Administrative Hearings; Anne Arundel County Public Schools; Frederick County Public Schools; Department of Legislative Services

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