

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1004
 Economic Matters

(Delegate Davis, *et al.*)

Finance

Equal Pay Commission - Establishment

This bill establishes an Equal Pay Commission in the Division of Labor and Industry (DLI) within the Department of Labor, Licensing, and Regulation (DLLR). The commission must study specified wage disparities, establish a mechanism to collect data from employers in the State in order to evaluate wage disparities, develop a strategy to determine and recommend best practices regarding equal pay for equal work, study and recommend administrative and legal processes and remedies to streamline and harmonize employment antidiscrimination laws, partner with other private- and public-sector entities, and share data and findings with the Commissioner of Labor and Industry to assist in enforcement actions of the Equal Pay for Equal Work law. The bill specifies the membership and terms of the commission and requires it to report findings and recommendations to the Governor and specified committees of the General Assembly by December 15, 2017, and annually thereafter.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: No expenditures are anticipated in FY 2016. General fund expenditures increase by at least \$59,200 in FY 2017 for two part-time contractual employees within DLLR to staff the Equal Pay Commission. Future year expenditures reflect the elimination of one-time start-up costs, annualization, and inflation, and the eventual termination of the contractual positions. Revenues are not likely affected.

| (in dollars) | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
|----------------|---------|------------|------------|------------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 0 | 59,200 | 47,400 | 49,000 | 0 |
| Net Effect | \$0 | (\$59,200) | (\$47,400) | (\$49,000) | \$0 |

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

Local Effect: None.

Small Business Effect: Minimal. Small businesses may be asked to respond to inquiries and provide information to the Equal Pay Commission.

Analysis

Current Law: 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.

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 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 State's Equal Pay for Equal Work law, an affected employee may bring an action against the employer to recover the difference between wages paid to male and female employees who do the same type work and 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.

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.

Federal Equal Employment Opportunity Commission

The federal Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal.

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it tries to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

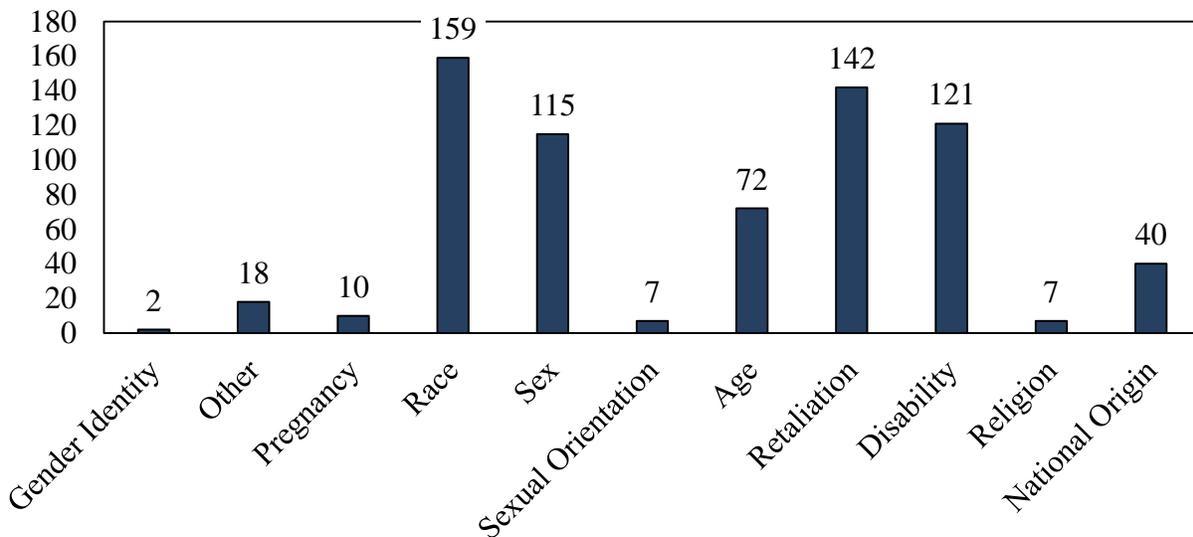
Background: The Maryland Commission on Civil Rights received 693 employment discrimination complaints in fiscal 2015. Race discrimination accounted for the most complaints, as shown in **Exhibit 1**.

Chapter 3 of the 2004 special session established the Equal Pay Commission to study the extent of wage disparities in the public and private sectors. The commission was also charged with studying the factors that cause the disparities, including segregation within occupations, payment of lower wages for work in female-dominated occupations, child-rearing and household responsibilities, and differences in education or experience. The commission was required to report on the consequences of the disparities and recommend actions to eliminate differential pay.

The [report of that Equal Pay Commission](#) included recommendations to (1) create a permanent commission to study wage disparities and best practices; (2) assign a State agency to enforce equal pay requirements; (3) develop a statewide wage data reporting system; (4) encourage family friendly work policies; (5) administer and enforce existing

laws; and (6) gather and disseminate best practices. The commission terminated on September 30, 2006.

Exhibit 1
Employment Complaints by Discrimination Type
Fiscal 2015



Source: Maryland Commission on Civil Rights

State Expenditures: DLLR advises it needs one part-time contractual assistant Attorney General to assist with minutes, records, data requests, and research and one part-time contractual administrative specialist to provide support for the commission. After the initial three years of the commission, it is anticipated that the demands of the commission will decrease with the establishment of data collection procedures and other processes, and existing staff can staff the commission.

As DLLR has received few complaints on the Equal Pay for Equal Work law, DLLR does not anticipate the commission's findings and data will increase DLLR's caseload for investigating Equal Pay for Equal Work violations. However, these assumptions could change based on the commission's findings. The commission must partner with private-sector entities and other public-sector entities to identify, among other things, potential funding sources to help DLI absorb costs of staffing the commission and implementing the commission's charge. Thus, to the extent that DLI may need additional resources beyond those identified above, it is assumed that the commission may find sources of funding to offset the additional expenditures. Otherwise, more general fund

support may be needed. Thus, general fund expenditures increase for DLLR by at least \$59,226 in fiscal 2017, which assumes a 30-day start-up delay. Although the bill takes effect June 1, 2016, no expenditures are anticipated in fiscal 2016. This estimate reflects the cost of hiring one part-time contractual assistant Attorney General and one part-time contractual administrative specialist to staff and support the commission. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. However, it assumes reimbursement for commission members can be absorbed within existing budgeted resources.

| | |
|---|-----------------|
| Contractual Positions (Full-time Equivalents) | 1.0 |
| Contractual Salaries and Fringe Benefits | \$47,698 |
| One-time Start-up Costs | 8,726 |
| Operating Expenses | <u>2,802</u> |
| Total FY 2017 State Expenditures | \$59,226 |

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.

Future year expenditures reflect full salaries with annual increases and employee turnover, annual increases in ongoing operating expenses, and the eventual termination of the contractual positions after three years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Commission on Civil Rights; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

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Analysis by: Heather N. Ruby

Direct Inquiries to:
 (410) 946-5510
 (301) 970-5510