

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 994 (Senator Young)
 Finance

Labor and Employment - Equal Pay for Equal Work - Revisions

This bill authorizes the Commissioner of Labor and Industry to enter an employer’s place of employment to inspect and copy payroll and other records, to question individuals, and to obtain other information reasonably necessary for the administration and enforcement of the State’s Equal Pay for Equal Work law. The commissioner may examine a witness under oath and subpoena the attendance and testimony of a witness or the production of documents relating to an investigation. The commissioner must maintain a hotline number so an employee may make a complaint or provide information regarding an Equal Pay for Equal Work violation. Among other provisions, the bill establishes an Equal Pay Commission, increases penalties for violations of the Equal Pay for Equal Work law, and requires an employer to include minimum rate of pay on job advertisements.

Fiscal Summary

State Effect: General fund expenditures increase by \$340,300 in FY 2017 due to additional staffing needs for the Department of Labor, Licensing, and Regulation (DLLR) to implement and enforce the bill. Out-year expenditures reflect annualization, elimination of contractual staff, one-time start-up costs, and inflation. The Judiciary and the Office of the Attorney General can likely process cases with existing resources. General fund revenues increase modestly from higher penalties imposed on employers violating the Equal Pay for Equal Work law.

| (in dollars) | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | \$340,300 | \$410,800 | \$426,200 | \$401,800 | \$417,200 |
| Net Effect | (\$340,300) | (\$410,800) | (\$426,200) | (\$401,800) | (\$417,200) |

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

Local Effect: Minimal. Local governments must advertise salaries on job announcements and are restricted from inquiring or providing salary history without written authorization. The bill does not materially affect local governmental operations or finances because relatively few cases should be heard in the circuit courts.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Equal Pay Commission

The bill establishes an Equal Pay Commission, staffed by DLLR, and specifies the membership of the commission and the terms of the members. The commission must:

- study and promote research regarding specified items relating to wage disparities;
- promote, in cooperation with the federal government and State, and local and private entities, programs to eliminate wage disparities between men and women and between minorities and nonminorities;
- sponsor and coordinate information and educational programs in the State intended to reduce or end specified wage disparities; and
- recommend any specific legislation that is necessary to eliminate specified wage disparities.

The commission must report by September 30 of each year to the Governor and the General Assembly on its results, activities, and legislative recommendations.

Duties of Employers

An employer must include specified compensation information, including a minimum rate of pay, in a job advertisement to recruit an employee or independent contractor. An employer may not pay less than the advertised minimum rate of pay. An employer may not seek salary history information for an employee or applicant without the written authorization of the employee or applicant, and an employer may not provide the salary history of a current or former employee to a prospective employer without the written authorization of the employee.

Violations and Enforcement

If an employer violates the Equal Pay for Equal Work law, an affected employee may bring an action against the employer to recover punitive damages, in addition to the difference between the wages paid to male and female employees who do the same type work and liquidated damages. An action must be filed within three years of the discovery of the act.

If an officer or agent of an employer willfully and knowingly permits the employer to evade a judgment in an action, the officer or agent is deemed to be the employer for the purpose of enforcing a judgment in an action.

The bill establishes civil penalties that the Commissioner of Labor and Industry may assess against an employer who violates the Equal Pay for Equal Work law for each employee, and requires the commissioner to consider the size of the employer and the gravity of the violation.

The bill increases the criminal penalty for violations of certain provisions of the Equal Pay for Equal Work law; a violator is guilty of a misdemeanor and subject to a maximum fine of \$5,000.

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 the 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.

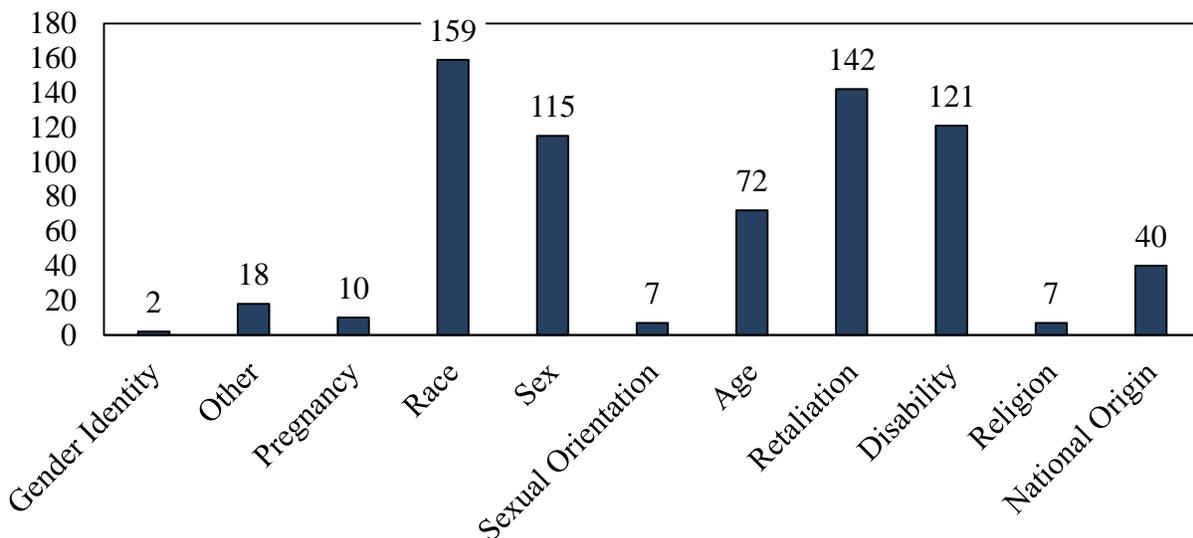
Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, 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 (MCCR) received 693 employment complaints in fiscal 2015. Of the employment complaints, 17% or 115 were sex discrimination 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.

Exhibit 1
Employment Complaints by Discrimination Type
Fiscal 2015



Source: Maryland Commission on Civil Rights

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.

State Revenues: The Commissioner of Labor and Industry may assess a civil penalty for a first Equal Pay for Equal Work violation of up to \$500 for employers with fewer than four employees and up to \$2,500 for employers with four or more employees. Civil penalties increase for subsequent violations, so that the maximum penalty for a third or subsequent violation is \$5,000, regardless of employer size. Additionally, 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 \$5,000, instead of \$300. As a result, general fund revenues increase beginning in fiscal 2017. The actual revenue increase depends on the number of violations and the number of repeat offenders. Based on previous discrimination case numbers, DLLR estimates 10% of complaints will result in noncompliance actions with penalties of up to \$31,000 being assessed.

State Expenditures: The bill creates additional responsibilities for DLLR’s Division of Labor and Industry by expanding the Equal Pay for Equal Work law to require employers to advertise specified wage information and to prohibit employers from inquiring or providing salary history of employees or applicants without written authorization. The bill expands the investigative authority of DLLR to enforce the Equal Pay for Equal Work law; thus, it is assumed that sex discrimination complaints regarding employment would be investigated by DLLR instead of MCCR. Additionally, DLLR must maintain a hotline number and staff the Equal Pay Commission. DLLR cannot absorb the additional workload within existing resources and requires additional staff to respond to the increase in inquiries and complaints prompted by the bill as well as to staff the commission.

The regular staff needed to respond to and manage the additional workload created by the bill includes an assistant Attorney General, an administrator, two administrative officers, and one office clerk. For the first three years, DLLR also needs one contractual administrative officer. DLLR estimates it could receive as many as 250 complaints alleging violations annually and advises that sex discrimination cases take additional time to investigate as wage disparities result from a multitude of factors.

Accordingly, general fund expenditures increase for DLLR by \$340,292 in fiscal 2017, which reflects the bill’s October 1, 2016 effective date. This estimate reflects the cost of hiring two regular and one contractual administrative officers, an administrative aide, and an assistant Attorney General as well as one regular administrator to investigate complaints and enforce the State’s Equal Pay for Equal Work law. 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.

| | |
|---|------------------|
| Regular Positions | 5.0 |
| Contractual Position | 1.0 |
| Regular Salaries and Fringe Benefits | \$256,880 |
| Contractual Salary and Fringe Benefits | 28,212 |
| One-time Start-up Costs | 32,178 |
| Operating Expenses | <u>23,022</u> |
| Total FY 2017 State Expenditures | \$340,292 |

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 elimination of the contractual position, annual increases, and employee turnover as well as annual increases in ongoing operating expenses.

The Judiciary and the Office of the Attorney General can likely process cases with existing resources, but to the extent that the bill causes a significant increase in litigation due to the Commissioner of Labor and Industry's expanded enforcement authority, the Office of the Attorney General may need an additional assistant Attorney General, and the Judiciary may incur additional operating costs from a possible increase in filing cases.

Small Business Effect: Employers who violate the Equal Pay for Equal Work law are subject to penalties of up to \$5,000. Small business must include minimum rate of pay and other wage information in job advertisements. To the degree that advertising the specifics related to wages on job announcements provides more information to employees, employers may experience pressure to decrease or eliminate wage disparities. Placing restrictions on inquiring about an applicant's salary history may complicate wage negotiations conducted in the hiring process.

Additional Information

Prior Introductions: None.

Cross File: HB 401 (Delegate K. Young, *et al.*) - Economic Matters.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Commission on Civil Rights; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 29, 2016
md/mcr

Analysis by: Heather N. Ruby

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