SB 404

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 404 (Senator Lee, *et al.*)
Finance

Labor and Employment - Equal Pay - Job Announcement and Salary History Information Disclosures

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This bill requires an employer with at least 15 employees to 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 screen an applicant for employment based on the applicant's salary history and may not seek salary history information for an employee or provide the salary history of a current or former employee to a prospective employer except in specified cases.

Fiscal Summary

State Effect: General fund expenditures increase by $561,500 in FY 2018 for the Department of Labor, Licensing, and Regulation (DLLR) to implement and enforce the bill. Out-year expenditures reflect annualization and the elimination of contractual staff and one-time start-up costs. The Office of the Attorney General can likely process cases with existing resources. General fund revenues increase modestly from penalties imposed on employers violating the bill.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	$561,500	$607,400	$552,900	$574,400	$597,200
Net Effect	($561,500)	($607,400)	($552,900)	($574,400)	($597,200)

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

Local Effect: Minimal. Local governments must advertise salaries on job announcements and are restricted from inquiring or providing salary history without specified authorization.

Small Business Effect: Meaningful.

Analysis

Bill Summary: An employer may not seek salary history information for an employee or screen an applicant for employment based on the applicant's salary history by requiring it to satisfy minimum or maximum criteria or requesting or requiring that the applicant provide salary history information as a condition of being interviewed, being considered for an offer of employment, an offer of employment, or an offer of compensation. An employer may seek an applicant's salary history to confirm that history if the employer has made an offer of employment that specifies the applicant's compensation and the applicant authorizes the employer to seek the information. An employer may not provide the salary history of a current or former employee to a prospective employer unless the prospective employer has made an offer of employment that specifies compensation and the applicant authorizes the prospective employer to seek salary history information. The bill does not permit an employee to disclose wage information in violation of these provisions.

Current Law: Regardless of employer size, 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 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.

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 authorization. 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.

The regular staff needed to respond to and manage the additional workload created by the bill includes an assistant Attorney General, an administrator, three administrative officers, and one office secretary. For the first two years, DLLR also needs one contractual administrative officer and one office secretary. DLLR estimates it could receive as many as 1,000 complaints alleging violations annually.

Accordingly, general fund expenditures increase for DLLR by $561,515 in fiscal 2018, which reflects the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring three regular and one contractual administrative officer, one regular and one contractual office secretary, and an assistant Attorney General as well as one regular administrator to investigate complaints. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	6.0
Contractual Positions	2.0
Regular Salaries and Fringe Benefits	$323,391
Contractual Salary and Fringe Benefits	58,899
One-time Start-up Costs	134,081
Operating Expenses	45,144
Total FY 2018 State Expenditures	**$561,515**

Future year expenditures reflect the elimination of the contractual positions, full salaries with annual increases and employee turnover, and ongoing operating expenses. If the volume of inquiries or complaints exceeds expectations, one or both of the contractual positions could be extended or converted to regular status.

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.

The Office of the Attorney General can likely process cases with existing resources.

The bill has an operational impact on recruiting and hiring State employees. State agencies may not seek salary history of applicants except under specified circumstances, which may hinder their ability to hire the most qualified candidates.

Small Business Effect: Employers with 15 or more employees 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 398 (Delegate K. Young, *et al.*) - Economic Matters.

Information Source(s): Maryland Association of Counties; 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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