

Maine Celebrates Equal Pay Day with New Equal Pay Act Amendments; Legislation Awaits Governor's Signature

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On April 2, 2019, the Maine Legislature celebrated Equal Pay Day by passing two significant [amendments](#) (“Amendments”) to the Maine Equal Pay Act. If, as expected, Governor Janet Mills signs the measure, certain salary history inquiries and employer policies prohibiting employee wage discussions will be deemed “evidence of discrimination.” While the Amendments do not directly “prohibit” such inquiries and policies, in effect, they operate as a ban on such conduct.

Specifically, the Amendments state that employers, either directly or indirectly (such as through an employment agency) may not inquire about or seek a job applicant’s compensation history from either the prospective employee or the prospective employee’s prior employers. Further, an employer may not require that a prospective employee’s prior wage history meet certain criteria. However, once an

offer that includes all terms of compensation has been negotiated and made to the prospective employee, the employer or its agent may inquire about or confirm the prospective employee's wage history.

Notably, if a prospective employee voluntarily discloses his or her wages without prompting by the employer, the employer may inquire about or seek to confirm the wage history *prior* to an offer of employment being extended.

Further, the Amendments do not apply to employers that make compensation inquiries when a federal or state law *requires* disclosure of a prospective employee's compensation history.

The Amendments do not define "compensation" or "wage history," so it is unclear if they are referring to just salary or include other benefits as well, such as bonuses or deferred compensation.

The Amendments also state that employers may not prevent employees from discussing their or another employee's compensation. The wage transparency provision does not contain any carve-outs for employees who gain access to employee compensation as a result of their position at the company, such as human resources professionals. The provision also lacks safeguards to protect employees from disclosure of their wage information without their permission.

If signed, the Amendments will go into effect immediately and Maine will become the fourteenth jurisdiction to restrict inquiries into prospective employee's salary history before the applicant receives a conditional offer of employment. The other states with such restrictions are California, Connecticut, [Delaware](#), Hawaii, Massachusetts, Oregon, and [Vermont](#), along with such cities as New York City, San Francisco, and most recently, Cincinnati. A similar [Philadelphia](#) law was partially struck down last year and currently is on appeal to the U.S. Court of Appeals for the Third Circuit.

Accordingly, Maine employers should review their job applications and hiring practices, as well as any policies that prohibit or restrict employee discussions of wages, to ensure that they are compliant with the forthcoming law.

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