

Maryland's Expanded Equal Pay Law Takes Effect October 1, 2016

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Maryland joins California, New York and Massachusetts by passing legislation aimed at combating wage disparity based on gender. (*For a discussion on [California](#), [New York](#) and [Massachusetts's](#) Equal Pay Laws, click on our previous posts.*)

Expanding Equal Pay for Equal Work

The new law, which goes into effect October 1, 2016, amends Maryland's existing Equal Pay for Equal Work Act by expanding the prohibition on wage discrimination based on "sex" to also include "gender identity." The protection against pay discrimination for work performed in the same establishment and of comparable character or on the same operation encompasses more than just unequal payment of wages. The new law also bars discrimination for "providing less favorable employment opportunities," which includes: (1) assigning or directing an employee into a less favorable career track or position; (2) failing to provide information about promotions or advancement opportunities in the full range of career tracks offered by the employer; or (3) limiting or depriving an employee of employment opportunities that would otherwise be available but for the employee's sex or gender identity.

New Defenses to Wage Differentials

The new law expands the permissible factors that employers can legitimately use to explain variations in wages to employees of one sex or gender identity. The law, as previously enacted, provided exceptions based on: (1) a non-discriminatory seniority

system; (2) a non-discriminatory merit increase system; (3) jobs that require different abilities or skills; (4) jobs that require regular performance of different duties or services; and (5) work performed on different shifts or at different times of day. The new law adds defenses for (6) a system that measures performance based on a quality or quantity of production; or (7) a bona fide factor other than sex or gender identity, including education, training, or experience, provided that the factor is not based on or derived from a gender-based differential in compensation, is job-related and consistent with a business necessity, and accounts for the entire differential.

Increased Wage Transparency

Additionally, the new law includes provisions to promote pay transparency in the workplace. Specifically, employers may not prohibit an employee from inquiring about, discussing or disclosing their own wages or the wages of a co-worker, or from requesting that the employer provide a reason for why the employee's wages are a condition of employment. Likewise, employers are prohibited from taking an adverse employment action against employees who inquire about, discuss, or disclose their own wages or the wages of other employees (if those wages have been voluntarily disclosed), ask employers to provide a reason for the employee's wages, or aid/encourage other employees in exercising their rights under the law. Significantly, the law allows employers to maintain a written policy which establishes reasonable workday limitations on the time, place and manner for wage discussions. Such limitations must be consistent with standards adopted by the Commissioner of Labor and Industry and all other state and federal laws.

It's important to note that the new law does not : (1) require employees to discuss or disclose their wages, (2) diminish employees' rights to negotiate terms and conditions of employment (including compensation), (3) limit employees' rights under a collective bargaining agreement, (4) obligate employers or employees to disclose wages, (5) permit disclosure of proprietary information, trade secrets or information that is otherwise protected by law without written consent of the employer, or (6) permit disclosure of wage information to a competitor of the employer.

Takeaways for Employers

Maryland's amended equal pay law applies to employers of any size. Therefore, Maryland employers should be proactive and conduct internal audits to analyze compensation data and evaluate the non-discriminatory reasons for any pay disparities. Notably, the definition of "same establishment" was expanded to include any workplace of the same employer located in the same county in the state, broadening the scope of comparators. Employers should also train managers and supervisors about the pay transparency provisions and modify existing policies, such as non-disclosure and anti-retaliation policies, to reflect the new law's requirements.

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