

Puerto Rico Enacts Equal Pay Law, Prohibits Employers from Inquiring about Past Salary History

Monday, March 13, 2017

Almost two months after signing sweeping employment law reform, Governor Ricardo Rosselló has signed Puerto Rico Act No. 16 of March 8, 2017, known as the “**Puerto Rico Equal Pay Act.**” Act 16 is effective immediately.

Although modeled after the federal Equal Pay Act, Act 16 goes further, limiting instances in which employers can inquire into an applicant’s salary history, among other key provisions.

Pay Discrimination Prohibition. Like the federal Equal Pay Act, Act 16 establishes a general prohibition of pay discrimination based on sex among employees in jobs that require equal skill, effort, and responsibility, and that are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

Past Salary History Inquiries Prohibited. Act 16 prohibits employers from inquiring into an applicant’s past salary history, unless the applicant volunteered such information or a salary was already negotiated with the applicant and set forth in an offer letter, in which case an employer can inquire or confirm salary history.

Pay Transparency. Act 16 forbids employers from prohibiting discussions about salaries among employees or applicants, with certain exceptions for managers or human resources personnel. It also contains an anti-retaliation provision protecting employees who disclose their own salary or discuss salaries with other employees, object to any conduct prohibited by the law, present a claim or complaint, or participate in an investigation under Act 16.

Remedies and “Self-Evaluation Mitigation.” Available remedies for victims of pay discrimination include back pay and an equal amount as a penalty. Double compensatory damages also are available as remedies. The additional back pay penalty can be waived if the employer demonstrates that, in the year prior to the presentation of a salary claim, the employer voluntarily undertook a “self-evaluation” of its compensation practices and made reasonable efforts to eliminate pay disparities based on sex. The self-evaluation or mitigating measures cannot be used as evidence of violation of the law for events that take place within six months after the self-evaluation’s completion or within one year of the self-evaluation if the employer has commenced reasonable and good faith mitigating measures. The Puerto Rico Secretary of Labor is tasked with preparing and distributing uniform guidelines for employer self-evaluations.

The Department of Labor is authorized to prepare interpretive regulations and must commence a statistical study into pay inequality among men and women. The federal EPA and its regulations will be used as reference in interpreting Act 16.

The penalty provisions of Act 16 will not be effective until March 8, 2018, to permit employers to take any mitigating measures.

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Article By
[Maralyssa Álvarez-Sánchez](#)
[Juan Felipe Santos](#) Jackson Lewis P.C.
Pay Equity Advisor
[Labor & Employment](#)
[Puerto Rico](#)