

## Maryland Expands Equal Pay Law to Prohibit Gender Identity Discrimination, Require Pay Transparency

By Emmett F. McGee

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Maryland Governor Larry Hogan has signed into law a significant expansion of the Maryland Equal Pay Law, including new provisions to prohibit pay discrimination on the basis of gender identity and to make it easier for employees to discover and discuss disparities in pay.

As expanded on May 19, 2016, the Maryland Equal Pay Law generally prohibits companies from paying a wage to employees of one sex or gender identity at a rate less than 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.”

As a result of another change in the law, employees are now deemed to work “in the same establishment” and thus subject to comparison if they work in the same county, even if they work in different offices or locations. The law, however, preserves certain defenses that permit employers to base variations in pay on non-discriminatory factors, including a seniority system, a merit increase system, shift differentials, and differences in job. The new law also provides some additional defenses that permit pay differentials based on education, training, experience, or a system that measures performance based on quality or quantity of production.

The new prohibition on gender identity discrimination extends beyond just pay. It also prohibits “providing less favorable employment opportunities” based on sex or gender identity, which includes directing employees into a less favorable career track or failing to provide information about promotions or advancement in the full range of career tracks offered.

### Pay Transparency

The other notable change in the Maryland law places new limits on a company’s ability to ban workers from inquiring about or discussing pay. Pay transparency is a national topic. The National Labor Relations Board, broadly interpreting employees’ right under the National Labor Relations Act to engage in protected concerted activity, repeatedly has struck down as unlawful confidential information policies that prohibit employees from disclosing or discussing their pay. Office of Federal Contract Compliance Programs (OFCCP) regulations prohibit government contractors from disciplining employees for inquiring about or discussing pay.

Now, Maryland joins a growing list of states that have adopted their own pay transparency laws. The new Maryland law gives employees the right to inquire about, disclose, and discuss their own pay and their coworker’s pay. However, Maryland employers may have written policies that establish “reasonable workday limitations” on the time, place, and manner for the discussion and disclosure of wages. Further, under the Maryland law, employers may prohibit an employee from discussing or disclosing another employee’s pay without that other employee’s prior permission, although such a policy requiring the coworker’s permission may not pass muster under federal laws.

The new provisions of the Maryland law take effect on October 1, 2016.

Jackson Lewis attorneys are available to answer inquiries regarding this law and other workplace laws.

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