

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 400
Finance

(Senator Kagan, *et al.*)

State Employment - Wage History and Wage Range

This bill prohibits an appointing authority in all branches of State government from seeking wage history information for an applicant, or from screening or considering an applicant for employment or determining an applicant's wages based on the applicant's wage history. However, an applicant is not prohibited from voluntarily sharing wage history information with an appointing authority. An appointing authority may not retaliate against or refuse to interview, hire, or employ an applicant because the applicant did not provide wage history. The bill includes reporting requirements for the Department of Budget and Management (DBM). **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill may affect salaries and wages paid by the State beginning in FY 2021, but a determination of whether it will result in a net increase or net decrease cannot be made reliably, as discussed below. DBM can carry out the research and reporting requirements with existing resources. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: After an appointing authority makes an initial offer of employment that specifies compensation to an applicant, an appointing authority may rely on wage history voluntarily provided by the applicant to support a higher wage offer only if it does not create an unlawful pay differential based on gender. An appointing authority may seek to

verify information other than wage history disclosed by the applicant or received from a background check if any wage history disclosed by the background check is not used to refuse to hire or determine the wage of the applicant.

An appointing authority is not prohibited from discussing an applicant's salary expectations as long as the discussion does not include a request for prior wage history. An applicant may not bring an action against an appointing authority for violating provisions of the bill.

The bill does not apply to an applicant who is already a State employee and is seeking a new position in State government.

By December 1, 2020, DBM must study the effect of similar laws in other jurisdictions on wage disparity based on gender and report its finding and recommendations to the Governor and the General Assembly. By December 1, 2022, and biennially thereafter, DBM must study salary equity by gender among State employees and report its findings and recommendations to the Governor and the General Assembly.

Current Law: Maryland's Equal Pay for Equal Work law applies to employees, including State employees, but not to job applicants. Under the law, 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 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.

Equal Employment Opportunity Program

There is an Equal Employment Opportunity (EEO) program for Executive Branch employees to ensure a system that provides equal opportunity in employment on the basis of merit and fitness. The Office of the Statewide EEO Coordinator, within DBM, administers and enforces State and federal EEO laws and policies; promotes a work environment free of any unlawful discrimination, harassment, and retaliation; and assists in the building of a well-diversified workforce of Maryland State government employees and applicants. The Secretary of Budget and Management must report at least annually on the EEO program to the Governor.

Background: The [Annual Statewide EEO Report](#) for fiscal 2019 found male employees were paid an average of \$6,167 more than female employees, with men earning \$61,785 and women earning \$55,618, as shown in **Exhibit 1**. The salary gap between men and women of the same race increased from 2014 to 2019 for Whites and African Americans. The salary of white men exceeded the salary of white women by \$4,628 in 2014 and \$5,739 in 2019. The salary gap between African American males and females rose from \$1,589 in 2014 to \$2,073 in 2019.

The salary differentials between men and women are related to differences in the types of positions held. Men (63%) are far more likely than women (37%) to hold positions in the Executive Pay Plan with positions classified as Grade 24 and above. Females hold approximately 60% of positions classified at Grade 13 and below.

Exhibit 1
Comparison of Average Salaries

Fiscal Year	Average Salary		White		African American		Other Minorities	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
2014	\$57,155	\$51,670	\$59,357	\$54,729	\$49,574	\$47,985	\$62,535	\$52,296
2019	\$61,785	\$55,618	\$65,641	\$59,902	\$53,726	\$51,653	\$68,184	\$58,465

Source: Department of Budget and Management

Other Jurisdictions

As of December 2019, 16 states and the District of Columbia had similar laws that prohibit employers from requesting salary history information from job applicants. In Maryland, [Montgomery County](#) prohibits county employers from requesting the salary history of an applicant for county employment and prohibits the county from relying on salary history to determine an applicant's starting salary.

State Expenditures: The bill has an operational impact, and potentially a fiscal impact, on recruiting and hiring State employees. Currently, if an applicant (including a current State employee applying for a new position) requests a salary above the base salary due to the applicant's salary history, proof of the salary is requested. Under the bill, the State is prohibited from confirming the wage history information voluntarily provided from an applicant (except one who is a current State employee) until after the employer has made an initial wage offer. Without being able to verify the salary information prior to an initial wage offer, the State may have to offer the lowest salary in the salary grade or offer a higher than justifiable wage. The bill may hinder the ability of State agencies to hire the most qualified candidates or it may prolong the wage negotiation process when hiring new employees. Additionally, recruitment systems may need to be modified to not request salary information and appointing authorities may need to retrain their staff to ensure compliance with the bill, both of which can be done with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 417 (Delegate Barron, *et al.*) - Appropriations.

Information Source(s): Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; Montgomery County; HR Dive; Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2020
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