

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 832 (Delegates Queen and White)
 Economic Matters

Labor and Employment - Equal Pay for Equal Work - Wage Range
 Transparency

This bill expands the applicability, requirements, and penalties of the State’s Equal Pay for Equal Work Law. Generally, an employer (or employment agency, if applicable) must disclose specified wage, benefit, and other compensation information (1) in public or internal job postings; (2) to applicants to which the job posting was not made available; and (3) to employees being promoted or transferred. The proactive disclosures have additional specified requirements and replace the existing requirement to disclose wage history to an applicant *on request*. The wage range must be set by the employer in good faith. Existing retaliation provisions are updated to incorporate employee promotions. Employers must keep records of compliance with the updated requirements. Existing enforcement provisions, including civil fines, are expanded and enhanced. An affected employee or applicant may bring an action for injunctive relief and to recover the greater of actual damages or \$10,000, plus attorney’s fees.

Fiscal Summary

State Effect: General fund expenditures for the Maryland Department of Labor (MDL) increase by \$188,600 in FY 2024. Future years reflect annualization and the elimination of one-time costs. State operations and expenditures (all funds and higher education expenditures) are further affected by the proactive and ongoing disclosure requirements, and may increase to pay damages to affected individuals under the bill. However, assuming a general level of compliance, the bill’s expanded penalty provisions do not materially affect State finances or operations.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	188,600	96,100	78,400	81,900	86,100
GF/SF/FF/HE Exp.	-	-	-	-	-
Net Effect	(\$188,600)	(\$96,100)	(\$78,400)	(\$81,900)	(\$86,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government operations are affected, and expenditures likely increase minimally. Revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Wage range” means the minimum and maximum hourly or salary wage for a position, set in good faith by reference to (1) any applicable pay scale; (2) any previously determined wage for the position; (3) the wage of an individual holding an equivalent position; or (4) the budgeted amount for the position.

Current Law:

Unlawful Discrimination

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.

Equal Pay for Equal Work

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 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. The State and local governments are considered employers.

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.

When the Commissioner of Labor and Industry has determined that the State's Equal Pay for Equal Work law has been violated, the commissioner must (1) try to resolve any issue informally by mediation or (2) ask the Attorney General to bring an action on behalf of the applicant or employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

If an employer violates the State's Equal Pay for Equal Work law, an affected employee may bring an action against the employer to recover the difference between wages paid to employees of one sex or gender identity and the wages paid to employees of another sex or gender identity who do the same type work, plus liquidated damages. An employee may bring an action on behalf of the employee and other employees similarly affected. An action must be filed within three years after the employee receives from the employer the wages paid on the termination of employment.

Upon written request of an employee, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate two or more claims against an employer.

Disclosure of Wage Ranges to Applicants Upon Request

Chapter 67 of 2020 requires an employer to provide, on request by an applicant for employment, the wage range for the position for which the applicant applied. An employer is prohibited 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 employer. An employer may not retaliate against or refuse to interview, hire, or employ an applicant because the applicant did not provide wage history or requested the wage range. The Act establishes penalties for employers who violate the related provisions multiple times.

State Expenditures: The extension of the Equal Pay for Equal Work law to include a broader definition of "wage range," the requirement for the employer to disclose wage ranges in every posting, transfer, promotion, or other employment opportunity, and the extension of the law to include applicants for employment is expected to increase the number of complaints to MDL by approximately 120 complaints per year. This cannot be absorbed within existing resources.

MDL advises that it requires one wage and hour investigator to conduct investigations and one contractual assistant Attorney General to assist in the process of interpreting and applying the bill, handle the resulting investigations' legal proceedings, and handle legal challenges. Accordingly, general fund expenditures increase by \$188,638 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. It includes salaries,

fringe benefits, one-time start-up costs, a one-time \$49,000 programming expense, and ongoing operating expenses.

Permanent Position	1.0
Contractual Position	1.0
Regular Salary and Fringe Benefits	\$54,571
Contractual Salary and Fringe Benefits	65,436
Other Operating Expenses	<u>68,631</u>
Total FY 2024 State Expenditures	\$188,638

Future year expenditures reflect the elimination of the contractual position and a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

State agencies must comply with the bill’s proactive wage range disclosure requirements, for both internal and external positions, along with additional recordkeeping requirements. Thus, the bill has an operational impact, and potentially a fiscal impact (all funds and higher education expenditures), on recruiting and hiring State government employees – both to meet the bill’s requirements and, potentially, to pay higher salaries.

Despite the bill’s establishment of a cause of action and enhancement of certain penalties, the bill is not expected to materially affect the workload of the District Court.

Local Expenditures: Local governments must comply with the bill’s proactive wage range disclosure requirements, for both internal and external positions, along with additional recordkeeping requirements. Thus, the bill has an operational impact, and potentially a fiscal impact, on recruiting and hiring local government employees.

Small Business Effect: Small businesses must comply with the bill’s proactive wage range disclosure requirements, for both internal and external positions, along with additional recordkeeping requirements. At a minimum this creates operational effects on small businesses and may result in higher labor costs.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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