



Bill: Senate Bill 217 – Labor and Employment – Wage History and Wage Range
Committee: Senate Finance Committee
Position: SUPPORT
Hearing Date: February 13, 2020

Senate Bill 217 could make an enormous difference in the career trajectories of Maryland employees who have been underpaid in their previous jobs, whether as a result of discrimination, their absence from the workplace to care for family members, or any other reason. As described in a 2018 report on inequality in the legal profession, called “Interrupting Racial & Gender Bias in the Legal Profession” by the ABA Commission on Women in the Profession, the idea of eliminating an irrelevant factor like salary history is called a “Bias Interrupter.” This term well describes what Senate Bill 217 attempts to accomplish. It would interrupt old habits that, though they look benign on the surface, only continue the pattern of bias against women and minority workers. Oddly, the employer doing the hiring is not responsible for these old instances of bias. That new employer did not choose to pay that candidate less for discriminatory reasons. But by giving weight to that particular factor, which may be tinged or completely infected with illegal pay discrimination, the employer is using someone else’s illegal actions as a facially unbiased factor in setting a salary.

The salary for a job should be what the job is worth. Employers can and should use data-based tools to figure out whether compensation offered for a job is competitive with the relevant market, including reputable compensation surveys and benchmarking data. Employers can and should consider the applicant’s experience, diligence, past references, in considering how well he or she will be able to do the job and contribute to the employer’s business or mission. But what he or she was paid in the past should not be part of that calculation — it has nothing to do with the job at hand.

We should follow the lead of other states and localities in interrupting bias by eliminating the use of this irrelevant factor in setting a wage or salary for a job.

The Maryland Employment Lawyers Association is a bar association of employee-side lawyers throughout the State, and an affiliate of the National Employment Lawyers Association.