

EQUAL PAY FOR EQUAL WORK



EQUAL PAY FOR EQUAL WORK

Subtitle 3. Equal Pay for Equal Work.



3-301. Definitions.

(a) *In general.* - In this subtitle the following words have the meanings indicated.

(b) *Employer.* -

(1) "Employer" means:

- (i) a person engaged in a business, industry, profession, trade, or other enterprise in the State;
- (ii) the State and its units;
- (iii) a county and its units; and
- (iv) a municipal government in the State.

(2) "Employer" includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) "Gender Identity" has the meaning stated in § 20-101 of the State Government Article. ("Gender identity" means the gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth, which may be demonstrated by consistent and uniform assertion of the person's gender identity; or any other evidence that the gender identity is sincerely held as part of the person's core identity.)

(d) *Wage.* -

(1) "Wage" means all compensation for employment.

(2) "Wage" includes board, lodging, or other advantage provided to an employee for the convenience of the employer.

3-302. Scope of subtitle.

This subtitle applies to an employer of both men and women in a lawful enterprise.

3-303. Miscellaneous powers of Commissioner.

In addition to any powers set forth elsewhere, the Commissioner may:

- (1) use informal methods of conference, conciliation, and persuasion to eliminate pay practices that are unlawful under this subtitle; and
- (2) supervise the payment of a wage owing to an employee under this subtitle.

3-304. Equal pay for equal work.

(a) means:

- (1) Assigning or directing the employee into a less favorable career track, if career tracks are offered, or position;
- (2) Failing to provide information about promotions or advancement in the full range of career tracks offered by the employer; or
- (3) Limiting or depriving an employee of employment opportunities that would otherwise be available to the employee but for the employee's sex or gender identity.

(b) (1) *In general.* - An employer may not discriminate between employees in any occupation by

(i) 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

(ii) providing less favorable employment opportunities based on sex or gender on sex or gender identity.

(2) For purposes of paragraph (1)(i) of this subsection, an employee shall be deemed to work at the same establishment as another employee if the employees work for the same employer at workplaces located in the same county of the state.

(c) *Effect of requirement.* - Except as provided in subsection (d) of this section, subsection (b) of this section does not prohibit a variation in a wage that is based on:

- (1) a seniority system that does not discriminate on the basis of sex or gender identity;
- (2) a merit increase system that does not discriminate on the basis of sex or gender identity;
- (3) jobs that require different abilities or skills;
- (4) jobs that require the regular performance of different duties or services;
- (5) work that is performed on different shifts or at different times of day;
- (6) a system that measures performance based on a quality or quantity or production; or
- (7) a bona fide factor other than sex or gender identity, including education, training, or experience in which the factor:
 - (i) is not based on or derived from a gender-based differential in compensation;
 - (ii) is job related with respect to the position and consistent with a business necessity; and
 - (iii) accounts for the entire differential.

(d) This section does not preclude an employee from demonstrating that an employer's reliance on an exception listed in subsection (c) of this section is a pretext for discrimination on the basis or sex or gender identity.

(e) *Reduction in wages.* - An employer who is paying a wage in violation of this subtitle may not reduce another wage to comply with this subtitle.

EQUAL PAY FOR EQUAL WORK (Continued)

3-304.1 (a) An employer may not:

- (1) prohibit an employee from:
 - (i) inquiring about, discussing, or disclosing the wages of the employee or another employee; or
 - (ii) requesting that the employer provide a reason for why the employee's wages are a condition of employment;
 - (2) require an employee to sign a waiver or any other document that purports to deny the employee the right to disclose or discuss the employee's wages; or
 - (3) take any adverse employment action against an employee for:
 - (i) inquiring about another employee's wages;
 - (ii) disclosing the employee's own wages;
 - (iii) discussing another employee's wages if those wages have been disclosed voluntarily;
 - (iv) asking the employer to provide a reason for the employee's wages; or
 - (v) aiding or encouraging another employee's exercise of rights under this section.
- (b) (1) subject to paragraph (2) of this subsection, an employer may, in a written policy provided to each employee, establish reasonable workday limitations on the time, place, and manner for inquiries about or the discussion or disclosure of employee wages.
- (2) a limitation established under paragraph (1) of this subsection shall be consistent with standards adopted by the commissioner and all other state and federal laws.
- (3) subject to subsection (d) of this section, limitations established under paragraph (1) of this subsection may include prohibiting an employee from discussing or disclosing the wages of another employee without that employee's prior permission.
- (c) except as provided in subsection (d) of this section, the failure of an employee to adhere to a reasonable limitation included in a written policy under subsection (b) of this section shall be an affirmative defense to a claim made against an employer by the employee under this section if the adverse employment action taken by the employer was for a failure to adhere to the reasonable limitation and not for an inquiry, a discussion, or a disclosure of wages in accordance with the limitation.
- (d) (1) a prohibition established in accordance with subsection (b)(3) of this section against the discussion or disclosure of the wages of another employee without that employee's prior permission may not apply to instances in which an employee who has access to the wage information of other employees as a part of the employee's essential job functions if the discussion or disclosure is in response to a complaint or charge or in furtherance of an investigation, a proceeding, a hearing, or an action under this subtitle, including an investigation conducted by the employer.
- (2) if an employee who has access to wage information as part of the essential functions of the employee's job discloses the employee's own wages or wage information about another employee obtained outside the performance of the essential functions of the employee's job, the employee shall be entitled to all the protections afforded under this subtitle.
- (e) Nothing in this section shall be construed to:
- (1) require an employee to disclose the employee's wages;
 - (2) diminish employees' rights to negotiate the terms and conditions of employment under federal, state, or local law;
 - (3) limit the rights of an employee provided under any other provision of law or collective bargaining agreement;
 - (4) create an obligation on any employer or employee to disclose wages;
 - (5) permit an employee, without the written consent of an employer, to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege or protected by law; or
 - (6) permit an employee to disclose wage information to a competitor of the employer.

3-305. Records and reports.

- (a) (1) Each employer shall keep each record that the Commissioner requires on:
- (i) wages of employees;
 - (ii) job classifications of employees; and
 - (iii) other conditions of employment.
- (2) An employer shall keep the records required under this subsection for the period of time that the Commissioner requires.
- (b) On the basis of the records required under this section, an employer shall make each report that the Commissioner requires.

3-306. Copies and posting of subtitle.

- (a) *Copies.* - On request of an employer, the Commissioner shall provide without charge a copy of this subtitle to the employer.
- (b) *Posting.* - Each employer shall keep posted conspicuously in each place of employment a copy of this subtitle.
- (c) The Commissioner, in consultation with the Maryland Commission on Civil Rights, shall develop educational materials and make training available to assist employers in adopting training, policies, and procedures that comply with the requirements of this subtitle.

3-306.1. Enforcement

- (a) Whenever the Commissioner determines that this subtitle has been violated, the Commissioner shall:
- (1) try to resolve any issue involved in the violation informally by mediation; or
 - (2) ask the Attorney General to bring an action on behalf of the applicant or employee.
- (b) The Attorney General may bring an action under this section in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

EQUAL PAY FOR EQUAL WORK (Continued)

3-307. Action against employer by or for employee.

(a) *Action by employee.*

(1) If an employer knew or reasonably should have known that the employer's action violates § 3-304 of this subtitle, an affected employee may bring an action against the employer for injunctive relief and to recover the difference between the 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 and an additional equal amount as liquidated damages.

(2) If an employer knew or reasonably should have known that the employer's action violates § 3-304.1 of this subtitle, an affected employee may bring an action against the employer for injunctive relief and to recover actual damages and an additional equal amount as liquidated damages.

(3) An employee may bring an action on behalf of the employee and other employees similarly affected.

(b) *Assignment of claims.* - On the written request of an employee who is entitled to bring an action under this section, the Commissioner may:

(1) take an assignment of the claim in trust for the employee;

(2) ask the Attorney General to bring an action in accordance with this section on behalf of the employee; and

(3) consolidate 2 or more claims against an employer.

(c) *Limitations period.* - An action under this section shall be filed within 3 years after the employee receives from the employer the wages paid on the termination of employment under § 3-505(a) of this title.

(d) *Defense.* - The agreement of an employee to work for less than the wage to which the employee is entitled under this subtitle is not a defense to an action under this section.

(e) *Costs.* - If a court determines that an employee is entitled to judgment in an action under this section, the court shall allow against the employer reasonable counsel fees and other costs of the action, as well as prejudgment interest in accordance with the Maryland Rules.

3-308. Prohibited acts; penalties.

(a) *Prohibited acts of employer.* - An employer may not:

(1) willfully violate any provision of this subtitle;

(2) hinder, delay, or otherwise interfere with the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

(3) refuse entry to the Commissioner or an authorized representative of the Commissioner into a place of employment that the Commissioner is authorized under this subtitle to inspect; or

(4) discharge or otherwise discriminate against an employee because the employee:

(i) makes a complaint to the employer, the Commissioner, or another person;

(ii) brings an action under this subtitle or a proceeding that relates to the subject of this subtitle or causes the action or proceeding to be brought; or

(iii) has testified or will testify in an action under this subtitle or a proceeding that relates to the subject of this subtitle.

(b) *Prohibited acts of employee.* - An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle;

(3) in bad faith, bring a proceeding that relates to the subject of this subtitle; or

(4) in bad faith, testify in an action under this subtitle or a proceeding that relates to the subject of this subtitle.

(c) *Action by Commissioner.* - The Commissioner may bring an action for injunctive relief and damages against a person who violates subsection (a)(1) or (4) or subsection (b)(1), (3), or (4) of this section.

(d) *Penalties.* - An employer who violates any provision of subsection (a)(2) or (3) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.

For additional information or to file a complaint, please contact:

FOR MORE INFORMATION CONTACT:

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