

Alabama Enacts New Equal Pay Law to Prevent Wage Disparity on Basis of Sex or Race

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On June 11, 2019, Alabama's governor, Kay Ivey, signed equal pay legislation (the "Act"), which goes into effect on September 1, 2019. [Alabama](#) now joins a growing number of states, including [California](#), Colorado, [Maryland](#), [Massachusetts](#), and [New Jersey](#), with newly enacted equal pay laws.

PAY EQUITY

The Act prohibits an employer from paying any of its employees a wage rate less than the wage rates paid to employees of another sex or race for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

An employer can avoid legal liability under the Act, however, if it demonstrates that the entire wage differential is pursuant to at least one of the following:

1. A seniority system;
2. A merit system;
3. A system that measures earnings by quantity or quality of production; or
4. A bona fide factor other than sex or race, such as education, training, or experience. This factor only applies, however, if the employer demonstrates that the factor is not based on or derived from a sex or race-based differential in compensation, is job-related with respect to the position in question, and is consistent with a business necessity.

Employees who unlawfully receive lower wage rates in violation of the Act can recover the amount of wages, with interest, that the employee should have received, and an equal amount (double) as liquidated damages.

COMPENSATION TRANSPARENCY REQUIREMENTS

Under the Act, an employer may not prohibit an employee from:

1. Disclosing their own wages;
2. Discussing the wages of others;
3. Inquiring about another employee's wages; or
4. Aiding or encouraging any other employee to exercise his or her rights under the Act.

Nothing in the Act, however, creates an obligation for an employee to disclose his or her wages.

NON-RETALIATION AND PRIVATE CAUSE OF ACTION

Under the Act, an employer may not discharge, discriminate, or retaliate against any employee who exercises his or her rights under the Act. Aggrieved employees who have been discharged, discriminated against, or retaliated against can file a civil cause of action up to one year after a violation occurs, and can seek reinstatement, reimbursement for lost wages and benefits, and equitable relief.

RECORD KEEPING REQUIREMENTS

The Act requires employers to maintain records of the wages and wage rates, job classifications, and other terms and conditions of their employees' employment for a period of three years.

WHAT EMPLOYERS SHOULD DO NOW

The Act goes into effect on September 1, 2019. Employers with employees in Alabama, as well as other jurisdictions with newly enacted equal pay laws, should consider privileged fair pay audits to ensure future compliance. Employers also should review handbooks, policies and practices concerning confidentiality requirements relating to discussion of employee wages, as well as their recordkeeping requirements to ensure that records concerning employee wages, wage rates, job classifications, and other terms and conditions of employer are kept for three years.

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