



# What Mississippi Employers Need to Know about the State's New Equal Pay Law

Insights

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Mississippi Governor Tate Reeves recently signed a new equal pay law into effect in an effort to reduce the wage gap between men and women in the state. The “Equal Pay for Equal Work Act,” signed on April 20 and taking effect on July 1, 2022, faced heavy criticism from some workers’ advocacy groups, but Governor Reeves and other state officials believe the new law is a leap forward by aligning state law with the federal Equal Pay Act of 1963. What do Mississippi employers need to know about this new standard – and what should you do to prepare?

## How the New Mississippi Law Aligns with Federal Law

Mississippi’s pay equity law will soon line up with federal law by prohibiting employers from paying a different wage rate to men and women who perform substantially equal work, the performance of which requires equal skill, education, effort, and responsibility, and which is performed under similar working conditions. Both laws have exceptions from the requirement of equal pay if the pay is based on a seniority system, a merit system, a system which measures earnings by quantity or quality of production, and for “any other factor than sex.”

## How the New Mississippi Law Differs from Federal Law

However, the Mississippi law contains some significant differences from the federal law:

1. The Mississippi law defines an “employee” as someone who is employed to work 40 or more hours per week, whereas federal law imposes no such requirement.
2. The Mississippi law defines an “employer” as any entity that employs five or more employees, whereas the federal law can apply to an employer with fewer employees as long as the employer or the employees are subject to the Fair Labor Standards Act.
3. Where the federal Equal Pay Act leaves it to the courts to interpret the phrase “any other factor than sex” to justify pay inequities, the Mississippi law expressly defines the phrase to include:
  - the salary history or continuity of employment history between men and women in the same establishment;
  - the extent to which there was competition with other employees for the employee’s services as compared to employees of the opposite sex in the same establishment; and

- the extent to which an employee negotiates for higher wages as compared to an employee of the opposite sex.
4. If a violation is proven, the Mississippi law limits the remedies to attorneys' fees, prejudgment interest, back pay, liquidated damages, and 100% of the difference in unpaid wages for a two-year time period. The federal law contains similar remedies – but allows an employee to assert a claim going back three years, and each paycheck that is issued which contains a pay inequity restarts the statute of limitations time period.
  5. The Mississippi law prohibits an employee from filing a lawsuit for the same pay inequity in both federal and state courts. Specifically, the law states that if an employee files a lawsuit pursuant to state law, the employee cannot also file a lawsuit in federal court pursuant to the federal Equal Pay Act.

### **What Else Does the New Mississippi Law Provide?**

Mississippi's equal pay law will prohibit an employer from reducing the wage rate of any employee to comply with the law. Also, an employer cannot discharge, discriminate, or in any way retaliate against any employee who invokes the law or who assists in any manner in the enforcement of the law. An employee has two years from the day the employee knew or should have known the employer was in violation of the law to file a lawsuit under Mississippi's equal pay law.

### **How Will the Law Impact Litigation?**

From a litigation standpoint, the state law will allow an employee to file an equal pay lawsuit in state court and litigate it there. When a federal Equal Pay Act case is filed in state court, most employers remove the lawsuit to federal court, which is typically a more favorable environment for employers. Mississippi's equal pay law states that the published precedents of the United States Supreme Court, the Fifth Circuit Court of Appeals, and the federal District Courts embracing the state Circuit Court where the lawsuit is pending "shall be considered mandatory authority" and shall be followed by the state Circuit Court unless the Mississippi Supreme Court or Mississippi Court of Appeals issue a contrary ruling.

### **What Should You Do?**

Mississippi-based employers and other employers with operations in Mississippi should use this new law as an opportunity to review employee categories and pay plans to determine compliance with the new state law. If there is a pay differential between a male and female employee who perform substantially similar jobs, you should conduct an analysis to ensure that the pay differential is justified and that it is not based in any way on an employee's gender. You may want to consider engaging your employment counsel to assist you with this endeavor in order to use the attorney-client privilege to your benefit.

Also, management personnel should be prepared to answer questions that may be posed to them once the law goes into effect on July 1. You should offer training to your managers to make sure they are up to speed on the contours of this new law.

## **Conclusion**

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our Gulfport office](#), or any attorney in our [Pay Equity Practice Group](#).

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