



Alabama is the Latest State to Join the Pay Equity Law Bandwagon

Insights

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Alabama recently joined 48 other states by passing a law banning wage discrimination. On June 11, Governor Kay Ivey signed HB 225, known as the Clarke Figures Equal Pay Act, into law. The Act's effective date is August 1. In passing the new law, Alabama now joins over a dozen other states which prohibit employers from discriminating against applicants based on their pay history. The idea behind such prohibition is that, in doing so, employers perpetuate the wage gap among men and women by locking women into unfair, discriminatory pay levels.

What Does The Act Say?

Under the new law, employers will be prohibited from paying an employee a lower wage rate than an employee of another race or sex for equal work in the same establishment, where job performance requires "equal skill, effort, education, experience, and responsibility...under similar working conditions." However, employers are permitted to base a wage differential on 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 differential based on any factor other than sex or race.

The Act also mandates that employers may not retaliate against or refuse to interview, hire, promote, or employ any applicant because such applicant refused to provide their wage history. Unlike most states with salary history bans, where the employer is outright banned from inquiring about salary history, Alabama's law allows employers to inquire about applicants' salary history—they just can't discriminate based on an applicant's refusal to provide his or her wage history. Additionally, the Act will give employees two years from the alleged violation to file a lawsuit.

How Does the Act Differ From the EPA?

Employers were already prohibited from discrimination in pay based on sex under the federal Equal Pay Act (EPA). Although Alabama's new pay equity law is very similar to the EPA, the Act has some key differences. First, it has a broader scope than the EPA, since it also features the salary history inquiry provision mentioned above and protects against discrimination on the basis of race. Moreover, the Act is more employer-friendly than the EPA as it requires a heightened pleading standard. Instead of only having to state a "plausible" claim, employees must plead their claims

“with particularity.” Specifically, the employee must demonstrate that the employer violated the Act, and that none of the Act’s exceptions apply.

Additionally, the Act’s penalties are not as harsh as those imposed under the EPA. The EPA imposes criminal fines for willful violations, but Alabama’s law will only require employers found in violation to pay the difference in wages caused by the violations, with interest. Also, the Act prohibits employees from seeking double recovery by requiring them to return the lesser amount recovered under either the state or federal law. The new state law also differs from the EPA in its record-keeping requirements. Unlike the EPA, which has its own record-keeping requirements, Alabama adopted the record-keeping requirements established by the Fair Labor Standards Act (FLSA).

What’s Next for Employers?

Although Alabama employers were already prohibited from wage discrimination under the EPA and Title VII of the Civil Rights Act, Alabama’s new pay equity law imposes limitations on hiring and selection practices, and the exceptions within the statute solidify the best practices for combating unlawful pay differentials among men and women. Therefore, Alabama employers should use the following tips to avoid violations:

1. **Use the statute’s exceptions as a blueprint.** Since the legislature has set forth legitimate reasons for paying employees who perform comparable work differently, you should take heed. There is no reason to recreate the wheel. This is the best way to avoid running afoul of the Act.
2. **Avoid requesting salary history information during the hiring process.** Although the Act is nuanced in that it still allows you to inquire about applicants’ salary history, you are still in violation if you discriminate against an applicant for refusing to provide their salary history. This may be a conservative approach for some, but the best way to avoid violating this provision of the Act is to refrain from requesting salary history or considering it during the hiring and selection process, unless it is absolutely necessary. Another consideration is that many employers operate nationally. Since most other states with salary history limitations have adopted an outright ban of the inquiry, you put yourself in the optimal position for compliance by following suit and similarly banning all salary history inquiries.

The differences in state equal pay laws are so numerous, and it may be difficult to ensure compliance on your own. Be sure to engage your employment attorney for privileged advice.

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Monica Snyder Perl

Partner

617.532.9327

Email

Service Focus

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