

Alabama Passes Equal Pay Act

On June 11, 2019, Alabama Governor Kay Ivey signed the Clarke-Figures Equal Pay Act, which prohibits any employer from paying an employee disparate wages compared to employees of another sex or race for equal work. This is a substantial development because the law allows aggrieved employees to file an action in state court without having to first file an EEOC charge. The law also prohibits adverse action or retaliation against an applicant who does not provide their wage history. And it applies to all employers without regard to number of employees. The law goes into effect on September 1, 2019.

While federal laws already prohibit discrimination in pay on the basis of race or sex, Alabama was only one of two states, the other Mississippi, to not have a corresponding state law. The Alabama law applies to all employers, including state and political subdivisions, regardless of size or number of employees. This is distinct from Title VII of the Civil Rights Act and the Equal Pay Act, which apply to companies with 15 or more employees. The Alabama Act prohibits an employer from paying wages to an employee less than the rate paid to employees of another sex or race "for equal work within the same establishment on jobs the performance of which requires equal skill, effort, education, experience, and responsibility, and performance under similar working conditions, except where payment is made pursuant to any of the following:

- (1) A seniority system.
- (2) A merit system.
- (3) A system that measures earnings by quantity or quality of production."

The law also prohibits employers from refusing to hire, promote, or employ an applicant for employment, or retaliate against an applicant, because the applicant does not provide a wage history. Although employers are still permitted to consider wage history when making an offer of employment, hiring managers should consider whether they need to ask prospective employees for that information.

Employees may file lawsuits in state court for violations of this law. However, if they are making a claim based on unequal pay, they must plead with particularity in their complaint that they were paid less than someone for equal work, and that the applicable wage schedule at issue was not correlated to any permissible reason. This heightened pleading requirement may create opportunities for employers to obtain dismissal of lawsuits at an early stage of the litigation.

A prevailing employee may only recover the difference in wages due to the discrimination, plus interest, and may not obtain additional damages from a parallel federal law action. Employees have two years after the discriminatory act to file a lawsuit. The Equal Pay Act joins the Alabama Age Discrimination in Employment Act in providing state law remedies for discrimination in the workplace.

Also note that the new law requires all employers in Alabama to adopt the rules for record-keeping established in the Fair Labor Standards Act (FLSA). This is already required for most employers and government agencies, however smaller operations that are not covered employers under the FLSA will now need to comply with FLSA record-keeping requirements under the new Alabama law.

EMPLOYMENT Alert

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