

Employment Law Update

The new Alabama equal-pay law becomes effective September 1, 2019, and it is broader than just requiring nondiscriminatory pay.

In June, Governor Kay Ivey signed the Clarke-Figures Equal Pay Act, Act No. 2019-519 (also known as HB 225). It goes into effect on September 1, 2019. There is already a federal Equal Pay Act (EPA) that requires employers to pay employees who perform the same work the same pay without discriminating on the basis of sex. Under both the EPA and Alabama's new law, other factors may justify a pay disparity, such as a seniority system, a merit system, education, training, and experience. Alabama's new law is consistent with the federal law and provides that an employer may not pay its employees less than other employees of another sex or race for equal work on jobs requiring equal skill, effort, education, experience, and responsibility under similar working conditions, unless there is another legitimate factor justifying the pay difference. Unlike the federal EPA, the new Alabama law prohibits pay disparities based on race in addition to sex, though pay disparities based on race fall under discrimination prohibited by federal statutes such as Title VII or 42 U.S.C. § 1981. The federal and Alabama age-discrimination laws and the federal Americans with Disabilities Act also include pay disparities based on age or disability as unlawful discrimination.

Despite the name of the act indicating it is just about equal pay, Alabama's law is broader than that. Alabama's new law also provides that an employer:

- may not prohibit an employee from disclosing his or her pay to others,
- may not prohibit employees from discussing the pay of others,
- may not prohibit employees from asking other employees about their pay, and
- may not retaliate against or refuse to interview, hire, promote, or employ someone who does not provide wage-history or earning-history information.

A prohibition on employers banning employees from disclosing or discussing their pay is already part of the federal National Labor Relations Act (NLRA), so employers already should be used to not prohibiting employees from discussing their pay. But I see employee handbooks that have not been updated in years that have provisions prohibiting employees from discussing their pay with others, and those should be removed from any employee handbooks. The new Alabama law goes further than just banning employers from prohibiting discussion and disclosure by employees of compensation — it also prohibits employers from retaliating against

employees or applicants who decline to provide information about their pay history. And while the federal NLRA provides for an employee to make a charge of an unfair labor practice, the new Alabama statute allows employees to sue their employer in state court. The statute of limitations on a claim under the new Alabama law is two years. Unlike many federal employment statutes, the new Alabama equal-pay law does not provide for an award of attorneys' fees to an employee who succeeds on a claim under the law and does not provide for an award of any punitive damages.

Alabama's new law also requires employers to follow the record-keeping rules established by the federal Department of Labor under the federal Fair Labor Standards Act (FLSA). This requires employers to maintain records of employee compensation and wage rates, job classifications, and other terms and conditions of employment for three years. Employers already compliant with FLSA record-keeping requirements will also be in compliance with the new Alabama law's requirements for keeping records.

Unlike some of the federal laws banning discrimination, Alabama's new law applies to all employers, regardless of the number of employees.

Employers should review their policies, handbooks, and practices to make sure they comply with this new law, and they should educate their supervisory personnel and hiring personnel about the restrictions. Though the new law does not prohibit asking about pay or wage history, because it prohibits any retaliation for failure to provide it, employers should consider no longer asking applicants about their pay or earnings history. Several other states and out-of-state municipalities now prohibit asking applicants about pay history, so not asking applicants about pay history is becoming standard practice for many employers.

A copy of the Clarke-Figures Equal Pay Act, Act No. 2019-519 can be found here: <http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0013439.PDF>

If you have questions about this or about any other employment issues, please contact us.