

## CLIENT ALERT

### Maryland Enacts Revised Equal Pay for Equal Work Law

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Maryland has joined the broader nationwide push to achieve pay equity between men and women, and has expanded that push to include pay equity based on gender identity. On May 16, 2016, Maryland Governor Larry Hogan signed into law the Equal Pay for Equal Work Act of 2016 (“Act”), which will take effect October 1, 2016. It mirrors, in many respects, a federal requirement imposed upon government contractors and subcontractors via an Executive Order issued by the Obama Administration and laws recently passed in California, New York, and elsewhere.

The Act amends in several ways existing Maryland law, which prohibits pay disparities based on gender where employees “work in the same establishment and perform work of comparable character or work on the same operation, in the same business, or of the same type.” First, the Act now also bars discrimination in pay based on gender identity. Second, the Act revamps the “same establishment” requirement by now providing that employees work in the “same establishment” if they work within the same county.

Third, the Act now bars employers from “providing less favorable employment opportunities” based on sex or gender identity, and defines that phrase to include assigning an employee to a “less favorable” position or career track, and failing to provide information about promotions or advancement “in the full range of career tracks.” This new language seems to acknowledge that pay disparities between men and women often stem not from differences among employees in the same positions, but differences in positions held and career paths taken by men and women.

Fourth, the Act modifies employer defenses to pay disparities, providing that lawful disparities may be based on pay systems that measure performance based on quality or quantity of production, or a “bona fide factor other than sex” such as education, training, or experience. The amendments state that these factors must be “job-related” and “consistent with a business necessity” and must account for the “entire pay differential.” The latter requirement appears to suggest that variances in pay that are not statistically significant may nonetheless be actionable, if the factors driving the pay differential do not explain the entire difference in pay.

Employers are also prohibited from taking any adverse employment action against an employee who asks about, discusses, or discloses his or her wages or the wages of another employee. Employers and other employees are not required, however, to provide requested wage information, and the law allows employers to set reasonable workplace limitations on the time, place, and manner of discussions about wages.

In light of this legislation and the broad effort to reach pay equity, employers should conduct regular privileged analyses of their compensation systems and pay data, give careful thought to the groupings of jobs that are compared for pay purposes, and identify, with particularity, the legitimate factors that impact pay within their workplaces.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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