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# NEW PAY TRANSPARENCY LAW: MARYLAND FOLLOWS GROWING TREND

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On April 25, 2024, Maryland Governor Wes Moore signed into law a new set of pay transparency requirements for all Maryland employers that will take effect on October 1, 2024. [The Wage Range Transparency Act](#) imposes new requirements on all Maryland employers, regardless of size. With these changes, Maryland will join D.C. and a growing number of other states that have enacted similar pay transparency laws.

The new law greatly expands the requirements under Maryland's Equal Pay for Equal Work Law, which until now only required employers to disclose the wage range for a position upon the applicant's request. The new law will require employers to provide, in all public or internal job postings (1) the wage range for the position, and (2) a general description of benefits and any other compensation offered for the position. Below is a detailed description of the new law and what employers need to know before the law takes effect in October.

## New Requirements for Employers

Effective October 1, 2024, Maryland employers will be required to disclose wage ranges and a general description of benefits and any other compensation offered on any public or internal posting for "a position for work that will be *physically performed*, at least in part, in [Maryland]."<sup>1</sup>

The law defines an "employer" as "a person engaged in a business, industry, profession, trade, or other enterprise in the State; the State and its units; a county and its units; and a municipal government in the State" and "includes a person who acts directly or indirectly in the interest of another employer with an employee."<sup>2</sup>

A "posting" under this law is defined as "a solicitation intended to recruit applicants for a specific available position." It includes both "recruitment done directly by an employer" and recruitment "indirectly through a third party."<sup>3</sup> Even if employers do not create a posting for an available position, they must still disclose the same information required on postings "before a discussion of compensation is held with the applicant; and at any other time on request of the applicant."<sup>4</sup>

<sup>1</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-304.2(a)(1)) (emphasis added).

<sup>2</sup> Md. Code Ann., Lab. & Empl. § 3-301(b)(1).

<sup>3</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-301(d)).

<sup>4</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-304.2(a)(2)(ii)).

The new law defines “wage range” as “the minimum and maximum hourly rate . . . or [] salary for a position.”<sup>5</sup> Employers must set wage ranges “in good faith by reference, to:

- (1) any applicable pay scale;
- (2) any previously determined [wage range];
- (3) the [wage range] of an individual holding a comparable position at the time of the posting; or
- (4) the [employer’s] budgeted amount for the position.”<sup>6</sup>

The law does not provide any information regarding what constitutes a “general description of benefits and any other compensation offered.” However, the Maryland Department of Labor will provide a form that employers can complete and include in each posting to comply with the new requirements.<sup>7</sup>

The new law also extends the existing retaliation prohibitions to protect both applicants and employees. Employers are now prohibited from refusing to “interview, hire, or employ an applicant . . . or promote or transfer an employee” for requesting a wage range, refusing to provide their wage history, or exercising any other rights under the law.<sup>8</sup>

Finally, and not to be missed in the law, employers must keep a record of their compliance with the new pay disclosure requirements “for each position for at least 3 years after the position is filled; or if the position is not filled, [3 years from when] the position was initially posted.”<sup>9</sup> The law does not include any other detail regarding specific documentation employers will need to maintain to demonstrate their compliance.

### **Consequences of Violating the Law**

The new law does not provide a private right of action. Instead, it provides the Commissioner of Labor and Industry the authority to issue an order compelling compliance for the first violation and following such an order, the Commissioner may, for a second violation, issue up to a \$300 civil penalty “for each employee or applicant for whom the employer is not in compliance,” escalating to a maximum \$600 civil penalty for each subsequent violation that occurs “within 3 years after a previous determination that a violation had occurred.”<sup>10</sup>

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<sup>5</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-301(f)).

<sup>6</sup> *Id.*

<sup>7</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-304.2(c)).

<sup>8</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-304.2(d)(1)(i)). The current version of the law already prohibits employers from (1) relying on an applicant’s wage history when considering their application or determining their offered wage, and (2) from seeking an applicant’s wage history from the applicant or their current or former employer. Md. Code Ann., Lab. & Empl. § 3-304.2(d)(1)(ii) (formerly § 3-304.2(b)(1)(ii)).

<sup>9</sup> HB 649/SB 525 (to be codified as amended at Md. Code Ann., Lab. & Empl. § 3-305(2)).

<sup>10</sup> Md. Code Ann., Lab. & Empl. § 3-308(e).

**Next Steps for Employers, Prior to October 1, 2024**

- Employers should review all job postings for jobs to be physically performed (even partially) in the state of Maryland to ensure they include the position's minimum and maximum hourly wage or salary and a general description of benefits and any other compensation offered.
- Employers should ensure protocols and procedures are in place to maintain documentation of their compliance with these new pay disclosure requirements for at least 3 years after the position is filled, or posted (if never filled).

Paul Hastings is monitoring all developments.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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