

GOVERNOR SIGNS INTO LAW THE EQUAL PAY ACT OF PUERTO RICO

March 21, 2017

Act 16 of March 8, 2017 requires public and private employers to provide equal pay to employees, regardless of their gender, that perform substantially the same work.

What follows is a summary of the salient provisions of the Act.

A. Effective on March 8, 2018, employers:

1. May not discriminate in the salary paid to employees of different sex, that are employed in Puerto Rico and that perform work that requires the same skill, effort and responsibilities under similar conditions, unless the difference in salary is due to:

- a) a bona fide seniority or merit system; or
 - b) a compensation system based on quantity or quality of production, sales or profits; or
 - c) differences in education, training or experience that are reasonably related to the specific functions; or
 - d) any other reasonable factor that is not the sex of the employee.
2. Will have to pay the difference of the salary the employee should have been receiving, plus an equal amount as penalty,

court costs and attorney's fees, should a court find that the employer incurred in gender-based discrimination in salary.

However, the penalty will not apply if the employer, during the year prior to the claim, initiated or completed in good faith, a voluntary self-evaluation of its compensation practices and accomplished a substantial reduction in eliminating sex-based salary differences.

The self-evaluation program must be reasonably detailed, with clear short-term goals, considering the size and economic resources of the business.

No negative inference may be made against the employer from the fact that the employer has not conducted or has not completed a self-evaluation.

The Puerto Rico Secretary of Labor must (presumably well before March 8, 2018) prepare the guidelines for self-evaluation programs.

Documents related to the self-evaluation program, or remedial actions taken pursuant to it, are not admissible in evidence to establish in violations of Act 16 or of any other law that prohibits pay discrimination, related to events

that occurred before the evaluation was completed; or that occurred:

- i. within the 6 months following the completion of the evaluation, or
- ii. within the year following the completion of the evaluation, if the employer establishes that it began to implement a good faith plan to correct sex-based differences in salary for comparable work.

The employer may not remedy the discriminatory salary difference by reducing the salary of the employee who is receiving the higher pay.

3. May not request from an applicant, or from the former employer of the applicant, the salary s/he received in the previous employment, unless:

- a) the applicant voluntarily reveals that information; or
- b) an offer has been made that includes a negotiated salary

4. May not require as a condition of employment, from an applicant or from an employee, to abstain from inquiring, discussing or divulging his/her salary or the salary of another employee that performs comparable work.

However, this can be required from employees that work in human resources, or have supervisory or managerial functions, or functions that require or allow access to compensation data; unless a written authorization has been obtained from the employee whose salary information would be divulged; or when that information is a matter of public record.

5. May not discharge, threaten discriminate or retaliate in the employment against an employee who has:

- a) divulged his/her salary or asked or discussed the salary of other employees; or
- b) objected to any practice prohibited by the Act
- c) filed a claim or grievance under the Act before any forum; or
- d) given, or attempted to give, testimony, or information during an investigation against his/her employer under this Act.

The remedy for violating this prohibition is the payment of double the damages caused. This payment is not subject to income tax.

Compensations paid for violations of Act 16 (except the penalty) will be credited toward compensation imposed for violations of similar provisions in other antidiscrimination laws.

6. Must provide to the Secretary all records and documents related to an investigation under the Act.

B. Other provisions

1. Claims can be filed in court directly by applicants or employees alleging violations of the Act.

2. Claims can also be filed in court by the Secretary on behalf of applicants or employees with grievances and others that are equally situated. The Secretary can intervene in cases filed by employees or applicants, and vice versa.

3. The Secretary may investigate, issue subpoenas, hold hearings, request information and examine records and documents necessary to implement the Act.

4. The Secretary will notify the Puerto Rico Solicitor of Women's Affairs of relevant findings of any further action under her enabling statute, including imposing administrative fees.

5. The Act must be interpreted using as reference the federal Equal Pay Act of 1963.

6. The statute of limitations to file a claim is 1 year from the date the employee knows a violation has occurred. A violation occurs when a discriminatory compensation

practice is adopted; when the employee is subject to such practice; or when the employee is affected by a discriminatory decision or practice, including every time salaries are paid in violation of the Act.

7. The Act became effective on March 8, 2017, except that, as mentioned above, employer responsibilities start on March 8, 2018, so that they may take corrective measures in the meantime (for example, the voluntary self-evaluation program).

Contact us

Please feel free to contact us to clarify any doubts on the implementation of the Act to your operations.

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