



Alabama Equal Pay Act

By Amy Jordan Wilkes and Caroline Page

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On June 11, 2019 Governor Kay Ivey signed the Clarke-Figures Equal Pay Act into law. The new law makes Alabama the 49th state to enact a state law against wage inequality. HB225 was sponsored by Representative Adline Clarke of Mobile and was supported by the Women's Fund of Greater Birmingham as well as the American Association of University Women.

Alabama employers have previously been subject only to federal wage equality law. The Equal Pay Act of 1963 ("EPA") prohibits employers from paying women less than men for doing the same or substantially the same work at the same facility. The employer can assert affirmative defenses to EPA claims by demonstrating that the pay gap is justified by a seniority system, a merit system, an incentive system, or other factors related to job performance and business operations. Title VII provides a broader protection, prohibiting compensation discrimination or segregating protected class workers in lower-paying jobs. Similarly, the ADEA and ADA prohibit pay discrimination against workers based on age or disability. Notably, the Lilly Ledbetter Fair Pay Act extends the EEOC filing period for wage discrimination cases. Each paycheck allegedly impacted by prior discriminatory pay starts a new filing period.

In addition to federal law protections, nearly all states have passed their own wage equality laws. The new Alabama law provides that an employer may not pay any of its employees at a wage rate lower than that paid to employees of another sex or race for equal work within the same establishment on jobs requiring equal skill, effort, education, experience, and responsibility under similar working conditions. There is an exception where the difference in wage is due to a seniority system, a merit system, a system measuring earnings by production quantity or quality, or a differential based on any factor other than sex or race. The law also prohibits an employer from refusing to interview, hire, promote, employ, or retaliate against any job applicant because the applicant does not provide wage history information. An employer who violates the new law is liable to the employee affected for wages, with interest, lost due to the violation.

To successfully bring a claim against the employer under the new law for unequal pay, the employee must plead with particularity the following: first, that the employee was paid less than someone for equal work possessing equal skill, effort, education, experience, and responsibility; and second, that the applicable wage schedule at issue was or is not correlated with any lawful exception.

Because there is now a right of action for wage inequality under state law, the employee may bring a claim against the employer in Alabama state court, whereas previously the only possible claims were in federal court. However, the employee has the option to bring claims under both federal and Alabama law. According to the state law, if the employee brings wage inequality claims under both federal and state law and is awarded amounts under both, the employee must return whichever amount is lower to the employer. Thus, an employee's award in a district court case where both federal and state claims are alleged will be reduced if the employee is successful on both claims. Due to the similarity between

federal law and the new Alabama law, it is foreseeable that this will occur. It is also foreseeable that an employee may elect to pursue only Alabama state law remedies.

Employers are now also required by state law to adopt the rules for record keeping established by the Department of Labor for the Fair Labor Standards Act.

The statute of limitations on the Alabama law is two years after the cause of action occurs. Employers should anticipate simultaneous claims under federal and state law. The new law goes into effect in August.

We will monitor the progression of claims brought under this new law as they arise and provide updates about the law's application and its interaction with federal claims.

To discuss further, please contact:

[Amy Jordan Wilkes](mailto:awilkes@burr.com) at awilkes@burr.com or (205) 458-5358

[Caroline Page](mailto:cpage@burr.com) at cpage@burr.com or (205) 458-5392

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