CLIENT ALERTS & INSIGHTS

Pay Disparity Takes Center Stage with New Legislation

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On May 22, 2019, Colorado Governor Jared Polis signed into law the Equal Pay for Equal Work Act. The Act, first proposed nearly 40 years ago, will take effect on January 1, 2021.

The Act prohibits employers from inquiring about or considering the wage/salary history of an applicant for purposes of determining their rate of pay, and prohibits discrimination against an applicant for refusing to disclose his or her wage/salary history. Additionally, the Act permits employees to freely discuss wages with their colleagues and employers, and prohibits employers from retaliating or discriminating against employees for doing so.

Employers are also prohibited from paying employees of different genders different wage rates for "substantially similar work," regardless of job title. For purposes of the Act, substantially similar work is based on a composite of skill, effort, and responsibility. Notwithstanding the foregoing, wage rate differentials are permitted when based on: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings based on quantity or quality of production; (iv) the geographic location of the employees; (v) education, training, or experience related to the work in question; or (vi) travel, if necessary for the work in question. The Act places the burden on the employer to demonstrate: the permissible basis for any wage differential, the reasonable application of such factor(s), that such factor(s) account for the entire wage differential, and that prior wage rate history was not considered.

As mentioned above, the Act permits employees to discuss wages in the workplace. It also grants employees a private right of action to sue employers, rather than a lengthy administrative process, required by the current law. Further still, the Act requires employers to announce and/or post all opportunities for advancement to all current employees prior to making a promotion decision, and for each job posting, requires employers to disclose the rate or range of compensation and a description of all benefits to be offered. In this regard, Colorado follows Washington as the latest jurisdiction to impose affirmative responsibilities on employers relating to disclosure of compensation.

Before the Act takes effect, employers should review all job applications and applicable pay scales for compliance with the Act.

For more information on this topic, please contact a member of the firm's Labor & Employment Practice Group.

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