

Puerto Rico Equal Pay Act Signed into Law

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On March 8, 2017, Governor Ricardo Rosselló Nevares signed Puerto Rico Act 16-2017, the local Equal Pay Act. The new law prohibits salary discrimination in both the public and private sectors, on account of sex. The law prohibits salary discrimination in comparable jobs based on sex, unless the difference in salary responds to: i) a *bona fide* seniority or merit system; ii) a compensation system based on the quantity or quality of production, sales or profits; iii) education, training or experience, inasmuch as these factors are reasonably related to the specific job; or iv) any other reasonable factor unrelated to the employee's sex.

The law prohibits employers to (i) in the absence of a voluntary disclosure, request an employment candidate or his/her current or former employers about his/her salary history, and/or (ii) request as a condition of employment or to remain in employment, that an employee or candidate refrain from requesting or disclosing information about his/her salary, or the salary of another employee in a comparable job. However, the law does not require an employer to disclose salary information about an employee to another employee or to a third party. An employer may prohibit that any employee with access to employees' compensation disclose said information without the employee's consent, unless the information can be found on a public record.

The law establishes a cause of action to recover any salary differences that the employee would have been entitled to receive in the absence of discrimination, and an equal amount as additional penalty, plus costs and attorney's fees.

An employer will not be liable for the additional penalty if it can prove that it initiated or completed a good-faith auto-evaluation process about its compensation practices within the term of one year prior to the filing of a salary discrimination claim and it has achieved reasonable progress to eliminate the compensation differences based on sex. The auto-evaluation process must be reasonably detailed and comprehensive and must have clear short-term objectives, taking into consideration the size and economic resources of the employer.

P.R. Act 16 also contains an anti-retaliation clause, to protect employees who (i) disclose their salary or inquire about or discuss other employees' salaries, benefits or privileges; (ii) object to any act or practice that is illegal under the

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law; (iii) file a complaint or claim under the law before any forum; and who (iv) offer or try to offer verbally or in writing any testimony, expression or information as part of an investigation against the employer for violations to the statute.

The law also states that an employer who fires, threatens, discriminates or retaliates against an employee in violation to the prohibitions in the statute, will be liable for an amount equal to double the damages caused to the employee.

The statute of limitations for filing claims under the law is of one year after the affected employee has knowledge of a violation of the statute.

The law confers to the P.R. Secretary of Labor the authority to adopt rules and regulations to enforce the same and to conduct investigations to ensure compliance. The Secretary of Labor may file complaints in Court against employers under this law, at its own initiative or at the request of employees.

This law is effective immediately. However, employers' liability for failure to comply with the statute will become effective one year after the enactment, to provide employers time to take the corrective measures provided by the statute (auto-evaluation process).

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