

HOUSE BILL 832

K3

3lr1452

By: **Delegates Queen and White**

Introduced and read first time: February 9, 2023

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Equal Pay for Equal Work – Wage Range**
3 **Transparency**

4 FOR the purpose of altering the requirement that an employer disclose certain wage
5 information to an applicant for employment; requiring an employer or, under certain
6 circumstances, an employer agency, to disclose certain wage information in certain
7 postings and to certain employees at certain times; requiring an employer to set the
8 wage range disclosed in good faith; prohibiting an employer from taking a certain
9 retaliatory action; requiring each employer to keep a record of compliance with
10 certain provisions of this Act; and generally relating to equal pay for equal work.

11 BY repealing and reenacting, with amendments,
12 Article – Labor and Employment
13 Section 3–301, 3–304.2, 3–305, 3–307, and 3–308(e)
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2022 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Labor and Employment**

19 3–301.

20 (a) In this subtitle the following words have the meanings indicated.

21 (b) (1) “Employer” means:

22 (i) a person engaged in a business, industry, profession, trade, or
23 other enterprise in the State;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(ii) the State and its units;

(iii) a county and its units; and

(iv) a municipal government in the State.

(2) “Employer” includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) “Gender identity” has the meaning stated in § 20–101 of the State Government Article.

(d) (1) “Wage” means all compensation for employment.

(2) “Wage” includes board, lodging, or other advantage provided to an employee for the convenience of the employer.

(E) “WAGE RANGE” MEANS THE MINIMUM AND MAXIMUM HOURLY OR SALARY WAGE FOR A POSITION, SET IN GOOD FAITH BY REFERENCE TO:

(1) ANY APPLICABLE PAY SCALE;

(2) ANY PREVIOUSLY DETERMINED WAGE FOR THE POSITION;

(3) THE WAGE OF AN INDIVIDUAL HOLDING AN EQUIVALENT POSITION; OR

(4) THE BUDGETED AMOUNT FOR THE POSITION.

3–304.2.

[(a) On request, an employer shall provide to an applicant for employment the wage range for the position for which the applicant applied.]

(A) AN EMPLOYER, OR IF THE EMPLOYER USES AN EMPLOYMENT AGENCY, THE EMPLOYMENT AGENCY SHALL:

(1) DISCLOSE IN EACH PUBLIC OR INTERNAL POSTING FOR EACH JOB, PROMOTION, TRANSFER, OR OTHER EMPLOYMENT OPPORTUNITY THE HOURLY OR SALARY WAGE OR WAGE RANGE AND A GENERAL DESCRIPTION OF BENEFITS AND OTHER COMPENSATION OFFERED FOR THE POSITION;

(2) IF A PUBLIC OR INTERNAL POSTING FOR A JOB, PROMOTION, TRANSFER, OR OTHER EMPLOYMENT OPPORTUNITY WAS NOT MADE AVAILABLE TO AN APPLICANT FOR EMPLOYMENT, DISCLOSE TO THE APPLICANT THE INFORMATION

REQUIRED TO BE DISCLOSED IN A PUBLIC OR INTERNAL POSTING UNDER ITEM (1) OF THIS SUBSECTION:

(I) BEFORE AN OFFER OF EMPLOYMENT IS MADE TO THE APPLICANT;

(II) A DISCUSSION OF COMPENSATION IS HELD WITH THE APPLICATION; AND

(III) AT ANY OTHER TIME ON REQUEST OF THE APPLICANT; AND

(3) PROVIDE AN EMPLOYEE WHO IS BEING PROMOTED OR TRANSFERRED WITH THE CURRENT WAGE RANGE AND A GENERAL DESCRIPTION OF THE BENEFITS AND OTHER COMPENSATION ASSOCIATED WITH THE EMPLOYEE'S NEW POSITION:

(I) AT THE TIME OF THE PROMOTION OR TRANSFER;

(II) ANNUALLY THEREAFTER; AND

(III) AT ANY OTHER TIME ON THE REQUEST OF THE EMPLOYEE.

(B) AN EMPLOYER SHALL SET THE WAGE RANGE DISCLOSED UNDER SUBSECTION (A) OF THIS SECTION IN GOOD FAITH.

[(b)] (C) (1) An employer may not:

(i) retaliate against or refuse to interview, hire, or employ an applicant for employment OR PROMOTE OR TRANSFER AN EMPLOYEE because the applicant OR EMPLOYEE:

1. did not provide wage history; [or]

2. requested the wage range in accordance with this section [for the position for which the applicant applied]; [and] OR

3. EXERCISED ANY RIGHTS UNDER THIS SECTION; AND

(ii) except as provided in paragraph (2) of this subsection:

1. rely on the wage history of an applicant for employment in screening or considering the applicant for employment or in determining the wages for the applicant; or

2. seek the wage history for an applicant for employment orally, in writing, or through an employee or an agent or from a current or former employer.

(2) After an employer makes an initial offer of employment with an offer of compensation to an applicant for employment, an employer may:

(i) subject to paragraph (3) of this subsection, rely on the wage history voluntarily provided by the applicant for employment to support a wage offer higher than the initial wage offered by the employer; or

(ii) seek to confirm the wage history voluntarily provided by the applicant for employment to support a wage offer higher than the initial wage offered by the employer.

(3) An employer may rely on wage history under paragraph (2) of this subsection only if the higher wage does not create an unlawful pay differential based on protected characteristics under § 3–304 of this subtitle.

[(c)] (D) This section may not be construed to prohibit an applicant for employment from sharing wage history with an employer voluntarily.

3–305.

(a) (1) Each employer shall keep each record that the Commissioner requires on:

(i) wages of employees;

(ii) job classifications of employees; and

(iii) other conditions of employment.

(2) EACH EMPLOYER SHALL KEEP A RECORD OF COMPLIANCE WITH § 3–304.2 OF THIS SUBTITLE FOR EACH JOB, PROMOTION, TRANSFER, OR OTHER EMPLOYMENT OPPORTUNITY.

[(2)] (3) An employer shall keep the records required under this subsection for the period of time that the Commissioner requires.

(b) On the basis of the records required under this section, an employer shall make each report that the Commissioner requires.

3–307.

(a) (1) If an employer knew or reasonably should have known that the employer's action violates § 3–304 of this subtitle, an affected employee may bring an action against the employer for injunctive relief and to recover the difference between the wages

1 paid to employees of one sex or gender identity and the wages paid to employees of another
2 sex or gender identity who do the same type work and an additional equal amount as
3 liquidated damages.

4 (2) If an employer knew or reasonably should have known that the
5 employer's action violates § 3-304.1 of this subtitle, an affected employee may bring an
6 action against the employer for injunctive relief and to recover actual damages and an
7 additional equal amount as liquidated damages.

8 (3) **IF AN EMPLOYER KNEW OR REASONABLY SHOULD HAVE KNOWN**
9 **THAT THE EMPLOYER'S ACTION VIOLATES § 3-304.2 OF THIS SUBTITLE, AN**
10 **AFFECTED EMPLOYEE OR APPLICANT FOR EMPLOYMENT MAY BRING AN ACTION**
11 **AGAINST THE EMPLOYER FOR INJUNCTIVE RELIEF AND TO RECOVER DAMAGES UP**
12 **TO \$10,000 OR ACTUAL DAMAGES, WHICHEVER IS GREATER, PLUS REASONABLE**
13 **ATTORNEY'S FEES.**

14 (4) An employee **OR APPLICANT FOR EMPLOYMENT** may bring an action
15 on behalf of the employee **OR APPLICANT** and other employees **OR APPLICANTS** similarly
16 affected.

17 (b) On the written request of an employee **OR APPLICANT FOR EMPLOYMENT**
18 who is entitled to bring an action under this section, the Commissioner may:

19 (1) take an assignment of the claim in trust for the employee **OR**
20 **APPLICANT**;

21 (2) ask the Attorney General to bring an action in accordance with this
22 section on behalf of the employee **OR APPLICANT**; and

23 (3) consolidate 2 or more claims against an employer.

24 (c) An action under this section shall be filed within 3 years after:

25 (1) the employee receives from the employer the wages paid on the
26 termination of employment under § 3-505(a) of this title; **OR**

27 (2) **THE DATE THE APPLICANT FOR EMPLOYMENT LEARNED OF THE**
28 **VIOLATION UNDER § 3-402.2 OF THIS SUBTITLE.**

29 (d) The agreement of an employee to work for less than the wage to which the
30 employee is entitled under this subtitle is not a defense to an action under this section.

31 (e) If a court determines that an employee **OR APPLICANT FOR EMPLOYMENT**
32 is entitled to judgment in an action under this section, the court shall allow against the

1 employer reasonable counsel fees and other costs of the action, as well as prejudgment
2 interest in accordance with the Maryland Rules.

3 3–308.

4 (e) (1) If the Commissioner determines that an employer has violated §
5 3–304.2 of this subtitle, the Commissioner:

6 (i) shall issue an order compelling compliance; and

7 (ii) may, in the Commissioner’s discretion:

8 1. for a first violation, issue a letter to the employer
9 compelling compliance;

10 2. for a second violation, assess a civil penalty of up to **[\$300]**
11 **\$1,000** for each **EMPLOYEE OR** applicant for employment for whom the employer is not in
12 compliance; or

13 3. for each subsequent violation, assess a civil penalty of up
14 to **[\$600] \$5,000** for each **EMPLOYEE OR** applicant for employment for whom the employer
15 is not in compliance if the violation occurred within 3 years after a previous determination
16 that a violation had occurred.

17 (2) In determining the amount of the penalty, if assessed, the
18 Commissioner shall consider:

19 (i) the gravity of the violation;

20 (ii) the size of the employer’s business;

21 (iii) the employer’s good faith; and

22 (iv) the employer’s history of violations under this subtitle.

23 (3) If the Commissioner assesses a penalty under paragraph (1)(ii) of this
24 subsection, the penalty shall be subject to the notice and hearing requirements of Title 10,
25 Subtitle 2 of the State Government Article.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2023.