

New Mexico Enacts Fair Pay for Women Act

May 6, 2013

Earlier this spring, New Mexico Governor Susana Martinez signed into law the Fair Pay for Women Act ("FPWA" or the "Act"), prohibiting employers from engaging in gender-based wage discrimination. Inspired by the passage of the federal Lilly Ledbetter Fair Pay Act of 2009,[\[1\]](#) lawmakers in New Mexico are providing ready access to state courts and broader remedies for violations, in an effort to make it easier for the women in their state to bring claims of pay discrimination. The FPWA will take effect on June 14, 2013.

Discriminatory Acts

An employee need not prove that her employer intended to discriminate in order to prevail under the FPWA. It is discriminatory for employers with four or more employees to pay different wage rates to men and women who work in the same establishment, under similar working conditions, and are performing work on jobs requiring equal skill, effort, and responsibility. The FPWA makes clear, however, that it is not discriminatory for an employer to pay men and women different wages so long as the wage differential is based on a seniority or merit system, or a system that measures earnings based on the quality or quantity of production.

In addition to prohibiting wage discrimination, the FPWA protects employees against retaliation. The Act bars employers from retaliating against an employee for bringing an action, assisting another person in bringing a claim, or for informing another person of her rights under the FPWA.

Bringing a Claim

The Act enables employees in New Mexico to bring their wage discrimination claims directly to state court. Employees need not pay filing fees or court costs, nor must they exhaust administrative remedies prior to filing suit, and they have up to two years from their last date of employment to bring an action. Alternatively, employees may choose to file an administrative complaint under the New Mexico Human Rights Act. In situations where an employee elects to bring an administrative action under the Human Rights Act, the filing of the charge will toll the statute of limitations for bringing a court action.

Remedies

An employee who successfully brings a claim under the FPWA is entitled to recover the costs of the action and reasonable attorneys' fees. Damages may include unpaid wages for up to six years prior to the date of the last violation, and damages from retaliation, as well as employment reinstatement, and promotion. Courts also may award punitive damages and injunctive relief, such as requiring an employer to post a notice describing violations by the employer, or a copy of a cease and desist order applicable to the employer.

Comparison to Existing Law

Enacted in 1963, the federal Equal Pay Act ("EPA") also prohibits sex-based wage discrimination between men and women in the same establishment who are performing under similar working conditions. Indeed, the language of New Mexico's FPWA tracks fairly closely the language of the EPA in terms of what constitutes wage discrimination and what types of pay systems are excepted (*i.e.*, seniority-based, merit-based, and productivity-based schemes). Unlike the FPWA, however, which only applies to employers with four or more employees, the EPA applies to virtually all employers, as an employer must employ only one person in order to be covered. Despite this higher threshold for the FPWA to apply, the law aims to provide easier access to the legal system by eliminating filing fees and court costs, and by providing employees with the option of going directly to court or filing a complaint with an administrative agency. Though a person who wishes to file suit under the EPA also may go directly to court without first filing an administrative complaint, an EPA action must be filed in federal court, and the process can be expensive, as the law does not provide for the waiver of costs.

In passing the FPWA, New Mexico joins a growing list of states that have laws prohibiting sex-based wage discrimination. New York's Labor Law and California's Labor Code, for example, are among several state laws that contain provisions with substantially similar language to both the EPA and the FPWA, though enforcement mechanisms may vary among different states.

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Employers in New Mexico should familiarize themselves with the new law, as well as reviewing existing policies that may expose them to actions under the FPWA. If you have any questions or concerns regarding compliance with this law or related developments, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling & Training Group.

[\[1\]](#) The Ledbetter Fair Pay Act made it easier for employees to bring federal wage discrimination lawsuits by stating that the statute of limitations for filing such a charge restarts with each paycheck that manifests sex discrimination

Special thanks to Jacquelyn R. Weisman, Associate, for her assistance in drafting this alert.