

CLIENT ALERT: New Hampshire Paycheck Fairness Act Becomes Effective on January 1, 2015

On July 14, 2014, New Hampshire Governor Maggie Hassan signed the **Paycheck Fairness Act** (“the Act”) into law. Taking effect on January 1, 2015, the Act aims to strengthen existing prohibitions on unequal payment by sex, as well as impose notification and other requirements on employers. The Act applies to all New Hampshire employers.

As under current law, discriminating between employees on the basis of sex is unlawful. As stated by **Governor Hassan**, the Act is aimed at eliminating loopholes, increasing transparency in wages, and ensuring all workers have appropriate tools and resources to help them earn a fair and equal paycheck without the fear of retaliation. The Act states that no employer shall pay one sex at a rate less than the other sex “for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions.” The Act, however, will allow for unequal pay where payment is made pursuant to a seniority system, a merit or performance based system, a production system, expertise, shift differentials, or a “demonstrable factor other than sex, such as education, training, or experience.”

Employers who discover they are paying employees differently based on sex should immediately rectify such actions. According to the Act, an employer cannot lower the pay of the higher paid employee to comply with the law. Instead, they must increase the amount paid to the lower paid employee.

The Act also has a provision prohibiting retaliation against an individual for instituting or participating in an investigation under the Act. The Act prevents employers from requiring, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages. The Act also bars an employer from retaliating against an employee for inquiring about, discussing, or disclosing his or her wages or those of another employee. The Act does not, however, prevent an employer from disciplining an employee who has access to wage information as part of his or her essential job functions and who discloses the wages of other employees to individuals who did not have access to the information.

The Act also requires employers to keep a notice posted in a place accessible to employees that states as follows: “It is illegal in New Hampshire under both state and federal law to pay employees different wages for the same work based solely on sex. If you think that your employer has violated this provision, please contact the New Hampshire Department of Labor.” The notice must also provide the contact information for the department personnel to be contacted with complaints and a link to RSA 275:37.

Among its provisions, the Act also increases the statute of limitations for violations to three years from the discovery of the violation, but bars actions brought for violations that occurred more than four years prior to the start of the action.

Employers must carefully review their payment practices and ensure that they are in compliance with the new law by January 1, 2015. Employers should consult with their MBJ attorney with questions about this or any other wage and hour law.

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