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Progress in the States for Equal Pay

It has been over 58 years since the Equal Pay Act was passed, and since then we have seen women make tremendous strides in the labor force. However, women continue to be paid less than their male counterparts.¹ Women working full time, year round typically are paid just 83 cents for every dollar paid to men working full time, year round. Women of color are hit the hardest by the wage gap. Black women are typically paid just 64 cents for every dollar paid to white, non-Hispanic men, and Latina women are typically paid only 57 cents for every dollar paid to their white, non-Hispanic male counterparts. Among the states, women fare best in Vermont, where women working full time, year round typically make 91 cents for every dollar their male counterparts make. Women fare worst relative to men in Louisiana, West Virginia, and Wyoming, where women's earnings represented only about 65 percent of men's earnings, respectively.²

Across the country, there is a growing movement to finally close these wage gaps. In the past few years, lawmakers have introduced legislation in over two-thirds of the states to finally ensure that workers receive equal pay, no matter where they work, and many of these bills have become law. State efforts to close the wage gap not only make meaningful change for women's and families' economic security, they also lift the states' economies. **This fact sheet highlights states that enacted equal pay legislation in 2018, 2019 and 2020, and 2021.**

Prohibiting Use of Salary History in Hiring

When an employer relies on a job candidate's prior salary in hiring or in setting pay, any pay disparity or discrimination the candidate faced in her past employment is perpetuated throughout her career. Relying on salary history also penalizes job candidates who reduced their hours in their prior job, or left their prior job for several years, to care for children or other family members. Fourteen states have enacted legislation prohibiting employers from seeking salary history from job candidates since 2016.

2021

NEVADA: Nevada enacted legislation prohibiting employers and employment agencies from seeking a job applicant's salary history, as well as relying on the salary history in considering the applicant for employment or determining the applicant's wages. The law also prevents employers from retaliating against or refusing to interview, hire, promote, or employ an individual for not providing their salary history.³

RHODE ISLAND: Rhode Island amended its equal pay law to prohibit employers from seeking an applicant's wage history or relying on wage history in considering the applicant for employment or determining the applicant's wages. Job applicants may still volunteer their wage history, and an employer can rely on and seek to confirm an applicant's voluntarily provided wage history to support an offer higher than the initially offered wage, unless doing so would create an unlawful pay differential. The law additionally prevents employers from retaliating against or refusing to interview, hire, promote, or employ an individual for not providing their wage history.⁴

2020

MARYLAND: Maryland amended its equal pay law to prohibit employers from seeking job applicants' salary history or relying on an applicant's salary history in considering the applicant for employment or in determining the applicant's wages. Job applicants may still volunteer their salary history and an employer can rely on and seek to confirm an applicant's voluntarily provided salary history to support an offer higher than the wage the employer initially offered, unless doing so would create an unlawful pay differential. The law further prevents employers from retaliating against or refusing to hire an applicant for not providing their salary history.⁵

2019

ALABAMA: Alabama was one of only two states without an equal pay law until it passed a law in 2019. While Alabama has not yet banned employers from seeking and relying on salary history, Alabama's new equal pay law does prohibit an employer from refusing to interview, hire, promote, or employ a job applicant, or retaliate against an applicant because the applicant does not provide their salary history.⁶

COLORADO: Colorado amended its equal pay law to prohibit an employer from seeking job applicants' salary

history, relying on their salary history to determine their pay, or discriminating or retaliating against an applicant for failing to disclose their salary history.⁷

ILLINOIS: Illinois amended its equal pay law to prohibit employers from screening job applicants based on their current or prior wages, including benefits or other compensation, and from requesting or requiring applicants to disclose salary history as a condition of being interviewed, considered for employment, offered compensation, or being employed. The law also prohibits employers from seeking a job applicant's salary history from a current or former employer. An employer does not, however, violate the equal pay law when a job applicant voluntarily discloses their current or prior salary history as long as the employer does not consider or rely on the applicant's disclosure when offering the job applicant employment, compensation, or in determining future wages, salary, benefits or other compensation.⁸

MAINE: Maine amended its antidiscrimination law to prohibit an employer from seeking a job applicant's compensation from the applicant or from their current or former employer unless an offer of employment that includes all the terms of compensation has been negotiated and made to the applicant. The employer may then inquire about or confirm the applicant's compensation history.⁹

NEW JERSEY: New Jersey amended its antidiscrimination law to prohibit an employer from screening a job applicant based on the applicant's salary history or benefits, or from requiring the applicant's salary history satisfy minimum or maximum criteria. If an applicant voluntarily provides their salary history, the employer may verify their salary history and consider it in determining the applicant's pay. An employer may also request that an applicant provide a written authorization to confirm their salary history after the employer makes a job offer that includes an explanation of the compensation package.¹⁰

NEW YORK: New York amended its equal pay law to prohibit an employer from relying on a job applicant's salary history to determine whether to offer them employment or to determine their pay. The new law also prohibits an employer from seeking a job applicant's or current employee's salary history from the applicant or employee or from current or former employer as a condition of being interviewed, being offered employment, or being employed or promoted. Job applicants and current employees may still volunteer their salary history, but an employer may confirm their salary

history only if at the time a job offer with compensation is made, the applicant or current employee responds by providing their salary history to support a salary higher than that offered by the employer.¹¹

WASHINGTON: Washington amended its equal pay law to prohibit an employer from seeking a job applicant's salary history from the applicant or from their current or former employer or from requiring that an applicant's salary history meet certain criteria. An employer may, however, confirm the applicant's salary history if the applicant has voluntarily disclosed it or if the employer has already negotiated and made an offer of employment with compensation to the applicant.¹²

2018

CONNECTICUT: Connecticut enacted legislation prohibiting employers from inquiring, or directing a third party to inquire, as to a job applicant's salary history. An applicant may, however, voluntarily disclose such information, and an employer may inquire about other elements of an applicant's compensation structure, provided the employer does not inquire about the value of those elements.¹³

HAWAII: Hawai'i's new equal pay law prohibits employers from inquiring about a job applicant's salary history or relying on that information to determine the applicant's salary, benefits, or other compensation. The law does, however, permit an employer to consider an applicant's salary history if it is voluntarily provided by the applicant without prompting. The law also clarifies that it does not apply to applicants for internal transfer or promotion with their current employer.¹⁴

VERMONT: Vermont enacted legislation prohibiting employers from seeking information about a job applicant's current or prior compensation from the applicant themselves or from the applicant's current or former employer. Additionally, an employer may not require that an applicant's current or prior compensation meet a certain minimum or maximum standard, or decide whether to extend an interview opportunity to an applicant based on that person's current or prior compensation. The law does provide that if an applicant voluntarily discloses information about their compensation, the employer may seek to confirm that information after extending an offer of employment with compensation to that person.¹⁵

Requiring Transparency Around Salary Ranges

When an employer asks a job applicant what his or her salary expectations are without providing the applicant any information about the pay for the position, women and people of color lose out. Studies show that women often ask for less when they negotiate than men, even when the women applicants are otherwise equally qualified.¹⁶ Fortunately, studies show that when job applicants are clearly informed about the context for negotiations, including the types of compensation, benefits, or conditions that are negotiable, or the typical pay for the position, the gender wage gap narrows.¹⁷ California enacted legislation in 2017¹⁸ requiring employers to make the salary range for a position available upon request and more states are starting to follow suit.

2021

CONNECTICUT: Connecticut amended its equal pay law to require employers to disclose the wage range for positions to both job applicants and current employees. Employers must provide a job applicant with the wage range if the applicant requests it or when the employer offers the applicant the position, whichever occurs first. Employers must provide an employee the wage range when the employee is hired, changes positions, or requests a wage range. Under the law, "wage range" is defined as the range an employer "anticipates relying on" for the position and may include pay scale, previously determined wages for the position, actual wages for comparable employees, or the budgeted amount for the position.

NEVADA: Nevada enacted legislation requiring employers to provide an applicant with the wage range for a position if the applicant has completed an interview. Employers must provide an employee the wage range for a promotion or transfer if the employee has applied for a promotion or transfer, completed an interview, and requested the wage range.¹⁹

RHODE ISLAND: Rhode Island amended its equal pay law to require employers to provide the wage range to an applicant when the applicant requests it, as well as prior to discussing compensation. Employers must provide an employee the wage range when the employee is hired, changes positions, or requests the wage range.²⁰

2020

MARYLAND: Maryland amended its equal pay law to require

employers to provide the salary range for a position if the applicant for that position requests it. The law also prohibits employers from retaliating against applicants for requesting the salary range for a position.²¹

2019

COLORADO: Colorado became the first state to require employers to include in every job posting the actual hourly or salary compensation or range of compensation for the position and a description of benefits. The new law also requires an employer to make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees.²²

WASHINGTON: Washington amended its equal pay law to require employers with 15 or more employees to provide the minimum wage or salary for the position to job applicants who request it after the employer has offered them the position. The new law also requires an employer to provide the pay scale or salary range for a position to an employee offered an internal transfer to a new position who requests it. If no scale or range exists, the employer must provide the employee with the minimum salary expectation set by the employer prior to posting the position, making a position transfer, or making the promotion.²³

Requiring Employers to Collect and Report Pay Data

You can't fix what you can't measure. This is especially true for pay discrimination which is often difficult to detect and address. It would be much easier to close discriminatory wage gaps if employers and governments had more information about pay disparities by sex, race and ethnicity. But in 2017, the Trump administration blocked an important Obama-era equal pay data collection initiative that required large employers to report pay data by race, ethnicity and gender and job category. With federal efforts stymied, states have been pushing for pay data reporting, recognizing how it helps government agencies more efficiently identify and target patterns of wage disparities and encourages employers to analyze their own pay and hiring practices and self-correct any wage gaps.

2021

ILLINOIS: Illinois enacted legislation requiring private employers with more than 100 employees that are required to file EEO-1 reports under federal law to certify compliance with federal and state equal pay laws. The

Illinois Department of Labor will assign each covered employer a deadline by which it must initially apply for the certificate between March 2022 and March 2024, and each employer must recertify every two years thereafter. To obtain a certification, employers must submit the most recently filed EEO-1 and a list of all employees during the past calendar year to the Illinois Department of Labor. Employers must provide the total compensation of each employee broken down by gender, race, and ethnicity, as well as the county where each employee works, the start date of each employee, and any other pertinent information. The employer also must provide the following certifications: that the average compensation for its female and minority employees is not consistently below the average compensation for its male and non-minority employees; that the employer does not restrict employees of one sex to certain jobs or make retention and promotion decisions without regard to sex; what approach the employer takes in determining compensation and benefits; and that the employer corrects compensation and benefit disparities when identified. Employers who fail to obtain an equal pay certification or whose certification is revoked or suspended are subject to a \$10,000 fine. Possession of an equal pay certification is not a defense against an equal pay violation, nor a basis for mitigation of damages.²⁴

2020

CALIFORNIA: California enacted legislation requiring California employers with 100 or more employees who are required to file EEO-1 reports under federal law to submit an annual pay data report to the California Department of Fair Employment and Housing outlining the compensation and hours worked of its employees, broken down by sex, race, ethnicity, and job category. The first reports are due by March 31, 2021. The new law also authorizes the Department to publish aggregate reports based on the collected pay data.²⁵

Protecting Employees Who Discuss Their Pay

Pay secrecy policies and practices perpetuate pay discrimination by making it difficult for employees to learn about unlawful pay disparities. Employers often institute policies prohibiting or discouraging employees from disclosing their own compensation to other employees. According to a 2014 survey by the Institute for Women's Policy Research, two-thirds of private sector workers reported that their employer either prohibits or discourages employees from discussing their wages.²⁶ When workers

fear retaliation for talking about their pay, any pay discrimination they face continues to grow, undiscovered, in the shadows. Making it clear that workers have the right to ask about, discuss, and disclose their pay without repercussions is a powerful tool for discovering and remedying unequal pay. Twenty states and the District of Columbia have enacted provisions to stop employers from retaliating against employees who discuss their wages with each other, or from outright prohibiting these discussions. Many of these protections were passed in the last several years.

2021

RHODE ISLAND: Rhode Island amended its equal pay law making it illegal for an employer to prohibit employees from inquiring about, discussing, or disclosing their own wages or another employee's wages or to retaliate against an employee for doing so. The law additionally prevents employers from retaliating against or refusing to interview, hire, promote, or employ an individual because they requested the wage range for a position.²⁷

2020

MARYLAND: Maryland previously protected employees from retaliation for asking about other employees' wages, but amended their equal pay law to ensure that employees are also protected from retaliation for asking about their own wages.²⁸

VIRGINIA: Virginia enacted legislation to prohibit employers from firing or retaliating against employees who ask about or discuss their own compensation or another employee's compensation.²⁹

2019

COLORADO: Colorado's antidiscrimination law previously protected certain employees from retaliation for discussing their pay, but Colorado amended its equal pay law to protect all employees from being discharged, disciplined, discriminated against, coerced, intimidated, threatened, or interfered with for inquiring about, disclosing, comparing, or discussing their pay. The law also bans employers from prohibiting an employee from disclosing their pay as a condition of employment or from requiring an employee to sign a waiver or document that prohibits them from disclosing their pay.³⁰

ILLINOIS: Illinois amended its equal pay law, which already protected employees from retaliation for discussing

their pay, to also make it illegal for employers to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing their compensation. The law does permit, however, an employer to prohibit HR employees, supervisors, or other employees whose job responsibilities require access to employee wage information from disclosing such information without prior written consent from the employee whose information is sought.³¹

NEBRASKA: Nebraska amended its equal pay law to prohibit an employer from discriminating against employees or job applicants who have inquired about, discussed, or disclosed information regarding employee compensation. The law does not apply, however, to employees who have authorized access to information regarding other employees' compensation as a part of their job functions and disclose such information to a person who does not otherwise have authorized access to such information, unless the disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or other action.³²

2018

HAWAII: Hawai'i enacted legislation making it unlawful for an employer to prohibit or retaliate against an employee for disclosing his or her own wages or discussing or inquiring about other employees' wages.³³

NEW JERSEY: New Jersey enacted legislation strengthening the state's pay transparency protections. New Jersey law previously protected employees from reprisals for requesting compensation information and only if the purpose of their request was to assist in investigating the possibility of pay discrimination. New Jersey's new law expands that protection to protect employees from reprisals for requesting, discussing, or disclosing information about their own compensation or about the compensation of any other employee or former employee for any purpose. The law also made it unlawful to require an employee or job applicant to sign a waiver or otherwise agree not to disclose compensation information as a condition of employment. Additionally, the law provides that an employer may not retaliate against an employee who discusses or discloses compensation information with an attorney from whom they seek legal advice or any government agency.³⁴

WASHINGTON: Washington enacted legislation that prohibits employers from requiring employees to agree to not disclose their wages as a condition of employment, or from otherwise requiring employees to waive their right

to disclose their wages. The law also prohibits employers from discharging or retaliating against an employee who has inquired about, discussed, or disclosed their wages or another employee's wages, who has asked their employer to provide an explanation for their wages or lack of opportunity for advancement, or who has encouraged an employee to exercise their rights to discuss wages and compensation under the law. The law does provide that employers may prohibit employees who have access to compensation information as part of their essential job functions from disclosing wage information of other employees or applicants to other individuals without this access, unless the disclosure is pursuant to a complaint, charge, investigation, or other legal obligation.³⁵

Expanding Equal Pay Protections to Characteristics Other Than Sex

Working people too often experience discrimination in pay based on characteristics other than sex, like race or disability. And some people experience intersectional discrimination based on, for example, their race and gender, or their disability and gender combined. However, many state equal pay laws, like the federal Equal Pay Act, only address sex-based pay disparities. In the last couple years, states seeking to strengthen their equal pay laws and close wage gaps have extended their laws to other characteristics protected by anti-discrimination laws so that employees have the tools to address the full array of pay discrimination.

2021

RHODE ISLAND: Rhode Island extended equal pay protections to the following protected characteristics: race, color, religion, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin.³⁶

2019

ALABAMA: In 2019, Alabama finally enacted a state equal pay law. Alabama's new equal pay law requires employers to pay employees of different races or sexes equal pay for equal work.³⁷

COLORADO: Colorado amended its equal pay law to prohibit pay discrimination on the basis of sex, or "on the basis of sex in combination with another protected status" under Colorado's antidiscrimination law, like race, age, or national origin.³⁸

NEW YORK: New York's amended law extends equal pay

protections beyond sex to employees and interns who belong to one or more of the protected classes under New York law, including age, race, creed, color, national origin, sexual orientation, gender identity and expression, military status, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status.³⁹

2018

NEW JERSEY: New Jersey's equal pay legislation extended equal pay protections to all protected classes under New Jersey law, which includes race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces.⁴⁰

Allowing Fairer Comparisons of Work and Pay

The federal Equal Pay Act and many state equal pay laws have long required equal pay for "equal work." Many courts have narrowly and rigidly applied the "equal work" standard to throw out pay discrimination cases based on minute or irrelevant differences in the work or experience being compared. In response, states are increasingly considering adopting "substantially similar" or "comparable work" standards that hold the possibility of broader and fairer comparisons reflecting the reality of the modern workplace.

2021

CONNECTICUT: Connecticut changed its equal pay standard from equal pay for equal work to equal pay for "comparable work," which is work that is comparable when "viewed as a composite of skill, effort, and responsibility" and performed under similar work conditions.⁴¹

RHODE ISLAND: Rhode Island changed its equal pay standard to a "comparable work" standard, which is work that requires "substantially similar skill, effort, and responsibility" performed under similar conditions.⁴²

2019

COLORADO: Colorado amended its equal pay law to provide that employers may not pay employees of one sex less than employees of a different sex for "substantially

similar” work based on a composite of skill, effort, and responsibility, regardless of job title.⁴³

ILLINOIS: Illinois amended its equal pay law, which previously required equal pay for “substantially similar work...the performance of which requires equal skill, effort, and responsibility,” to require equal pay for “substantial similar work...the performance of which requires substantially similar skill, effort, and responsibility.”⁴⁴

NEW YORK: New York amended its equal pay law to expand existing pay equity provisions to require equal pay not for “equal work,” but for “substantially similar” work, when viewed as a composite of skill, effort, and responsibility, and performed under substantially similar working conditions.⁴⁵

2018

NEW JERSEY: New Jersey’s equal pay legislation changed their equal pay standard from “equal work” to a “substantially similar” work standard. The law clarifies that the work should be “viewed as a composite of skill, effort and responsibility.” Additionally, the law states that the wage rates in all of an employer’s operations or facilities should be considered when comparing the wage rates of employees performing substantially similar work.⁴⁶

WASHINGTON: Washington’s equal pay law has long provided that employers may not pay any female employee a lower wage than it pays to a male employee who is “similarly employed.” Washington’s 2018 equal pay legislation clarifies that individuals are “similarly employed” if they work for the same employer; the performance of the job requires similar skills, efforts, and responsibilities; and the jobs are performed under similar working conditions. Additionally, the amended law provides that “job titles alone are not determinative” as to whether two employees are in fact similarly employed.⁴⁷

Closing Loopholes in Employer Defenses

Current federal law and most state laws provide that a difference in pay will not be considered discriminatory where an employer can show that the differential was made pursuant to a seniority system; a merit system; a production system; or a differential based on any factor other than sex. Many courts, however, have interpreted these exceptions broadly, creating legal loopholes in which employers can justify almost anything as a “factor other than sex” without

much scrutiny from the courts.⁴⁸ This makes it extremely difficult for workers to challenge their unfair pay. Recently, several states took steps to strengthen their laws by limiting the employer defenses to claims of pay discrimination.

2021

RHODE ISLAND: Rhode Island amended its equal pay law to specify that an employer may show that pay differential is lawful by proving that is based on a seniority system; a merit system; a system that measures earnings by quality or quantity of production; geographic location; a reasonable shift differential; education, training, or experience, to the extent they are job-related and consistent with a business necessity; work related travel that is regular and a business necessity; or a bona fide factor other than the protected characteristic. The law also requires that this defense is only available if the employer reasonably relied on the factor and the factor reasonably explains the pay differential. Furthermore, the law provides that an individual’s wage history is not a defense to an equal pay action.⁴⁹

2019

COLORADO: Colorado amended its equal pay law to provide that an employer’s defense to a pay differential must be based on a seniority system; a merit system; a system that measures earnings by quantity or quality of production; the geographic location where the work is performed; education, training, or experience to the extent that they are reasonably related to the work in question; or travel, if the travel is a regular and necessary condition of the work performed.⁵⁰ The law also requires that each factor be applied reasonably and account for the entire wage differential. Additionally, the law explicitly provides that an individual’s salary history is not a defense to a pay discrimination action.

ILLINOIS: Illinois amended its equal pay law so that if an employer seeks to justify a pay differential based on “any other factor other than sex” or another protected characteristic it must not be based on or derived from a differential in compensation based on sex or another protected characteristic, and must be job-related with respect to the position, consistent with a business necessity, and account for the entire differential in pay.⁵¹

2018

NEW JERSEY: New Jersey enacted equal pay legislation providing that an employer’s defense to a pay differential must be based on a seniority system or merit system, or on

one or more bona fide factors other than the characteristics of protected class members. These bona fide factors may include training, education, experience, or the quantity or quality of production, and must not be based on nor perpetuate differentials in compensation based on sex or any other characteristic of a protected class member. The factors must be shown to have been applied reasonably, must account for the entire wage differential, must be job-related with respect to the position in question, and must be based on a legitimate business necessity. New Jersey's new law also provides that a factor could not account for a legitimate business necessity if there are alternative business practices that would serve the same business purpose without producing the wage differential.⁵²

WASHINGTON: Washington enacted equal pay legislation requiring an employer's defense to a pay differential be based in good faith on a bona fide job-related factor or factors that are consistent with a business necessity, not based on or derived from a gender-based differential, and account for the entire differential. Washington's amended law provides that these bona fide factors may include: education, training, or experience; a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a bona fide regional difference in compensation levels. Additionally, the law explicitly provides that an individual's salary history is not a defense to a pay discrimination action.⁵³

Challenging Occupational Segregation

Women continue to earn less than men in part because they are not offered the same opportunities for career advancement and promotions. Many employers continue to operate based on sex stereotypes about the competence and commitment of women—and mothers in particular—assuming that women will be uninterested or unable to perform jobs that require longer hours, frequent travel, or skills often associated with men, such as physical strength.⁵⁴ As a result, women are underrepresented in higher-paying positions and fields.

2018

WASHINGTON: Washington enacted equal pay legislation finding that equality of opportunity for career advancement is key to reducing income disparities based on gender, and prohibits employers from limiting or otherwise depriving an employee from these opportunities on the basis of gender.⁵⁵

Increasing Available Relief for Employees

Ensuring that equal pay laws provide for adequate damages or penalties is essential to incentivizing employers to lead the way in tackling the wage gap and fully compensating victims of pay discrimination. Several states have taken steps in recent years to strengthen the amount and type of relief available to victims of pay discrimination.

2021

RHODE ISLAND: Rhode Island amended its equal pay law to ensure that victims of pay discrimination can recover not only back pay and liquidated damages, but also compensatory damages, as well as appropriate equitable relief, including reinstatement of employment, fringe benefits and seniority rights, and reasonable attorneys' fees and costs. An employer that violates the wage history or wage range provisions of the amended law may be liable for compensatory damages or special damages not to exceed ten thousand dollars, appropriate equitable relief, and reasonable attorneys' fees and costs.⁵⁶

2019

COLORADO: Colorado's equal pay law was amended to provide victims of pay discrimination up to three years of back pay and liquidated damages equal to the employee's back pay. An employer is not liable for liquidated damages, however, if the employer can demonstrate that the equal pay violation was in good faith and that it had reasonable grounds for believing that it did not violate the equal pay law.⁵⁷

ILLINOIS: Illinois amended its equal pay law to ensure victims of pay discrimination can recover not only back pay for the wages they should have been paid had they not been discriminated against, but also compensatory and punitive damages and injunctive relief.⁵⁸

MARYLAND: Maryland amended its equal pay law to allow a court or the Labor Commissioner to require an employer to pay a civil penalty equal to 10% of the amount of damages owed by the employer if the employer is found to have violated Maryland's equal pay law two or more times within a 3-year period. Each civil penalty will be paid to the General Fund of the State to offset the cost of enforcing the law.⁵⁹

NEVADA: Nevada amended its equal pay law to provide the Nevada Equal Rights Commission (NERC) the authority to award victims of sex-based pay discrimination lost wages

or other economic damages resulting from discrimination, including lost payment for overtime, shift differential, cost of living adjustments, merit increases or promotions, or other fringe benefits. If the NERC finds that an employer with 50 or more employees committed willful pay discrimination, employers will have to pay civil penalties up to \$5,000 for the first offense up to \$10,000 for the second offense, and up to \$15,000 for the third and subsequent offense. However, if the employer engages in corrective action within 30 days, the Commission will not impose the civil penalty.⁶⁰

WYOMING: Wyoming increased penalties for employers that willfully engage in pay discrimination. Upon conviction from a court, an employer will be punished not more than \$500 or by imprisonment of not more than six months or both.⁶¹

2018

NEW JERSEY: New Jersey enacted equal pay legislation increasing the relief available to victims of pay discrimination, entitling victims to up to six years of back pay for a violation that continued to occur within the statute of limitations and allowing a court or the agency director to award treble monetary damages.⁶²

WASHINGTON: Washington enacted equal pay legislation increasing relief available to victims of pay discrimination. Under Washington's previous equal pay law, a victim could seek back pay through a civil action and an employer found to have violated the equal pay law would be guilty of a misdemeanor. The new law allows a victim to pursue relief through either an administrative or court proceeding and recover actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; and any other appropriate relief. The new law provides that any wages and interest owed must be calculated from four years from the last violation before the complaint. For employees who file a complaint with the Bureau of Labor and Industries, the Director may order payment to the department of a civil penalty not to exceed five hundred dollars, for a first violation. For a repeat violation, the civil penalty may not exceed one thousand dollars or ten percent of the damages, whichever is greater.⁶³

Holding State Contractors Accountable

Employers who contract with the state are paid through

public funds, and therefore have a special duty to address pay disparities. To ensure that the state does business with contractors who are following the laws, some states have enacted provisions to require contractors to certify that they are in compliance with state and federal equal pay laws or to report pay data broken down by sex, race, and ethnicity.

2018

NEW JERSEY: New Jersey enacted equal pay legislation requiring employers who enter into a contract with a public body to provide a report to the Commissioner of Labor and Workforce Development for each of their establishments that includes information about the compensation and hours worked by employees broken down by gender, race, ethnicity, and job category, and reported by pay band. For employers who enter into a contract with a public body to specifically perform a public work, the new law requires them to provide to the commissioner the gender, race, job title, occupational category, and rate of total compensation of every employee employed in the State in connection with the contract. This information is to be provided through certified payroll records throughout the duration of the contract, with an update to the information whenever payroll records are required by the state prevailing wage law. The law requires the Commissioner to retain the information provided by any of these employers during the duration of the contract and not less than five years after the end of that period. This information will be made available to the Division on Civil Rights in the Department of Law and Public Safety, and, upon request, provided to anyone who is or was an employee of the employer during the period of any of the contracts, or any authorized representative of the employee.⁶⁴

Promoting Best Practices to Foster Equal Pay for Public Employees

States also can take action by implementing best practices to promote pay equity for public employees.

2021

VIRGINIA: Virginia enacted legislation requiring all state agencies to establish a diversity, equity, and inclusion strategic plan to foster an equitable workplace environment. The plan must include best practices to foster pay equity pursuant to federal and state equal pay laws.⁶⁵

- 1 NWLC, *THE WAGE GAP: THE WHO, HOW, WHY AND WHAT TO DO* (Sept. 2019), <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>.
- 2 NWLC, *THE WAGE GAP, STATE BY STATE* (2019), <https://nwlc.org/resources/wage-gap-state-state/>.
- 3 S.B. 293, 2021 Reg. Sess. (Nv. 2021).
- 4 S.B. 270 (RI 2021).
- 5 H.B. 123, 2020 Leg., 441st Sess. (Md. 2020)
- 6 H.B. 225, 2019 Reg. Sess. (Al. 2019) (Act. 2019-519).
- 7 S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5-102 (2019)).
- 8 H.B. 0834, 101st Gen. Assemb. (Ill. 2019) (amending 820 ILCS 112/10 (2019)).
- 9 L.D. No. 278, S.P. 90, 129th Me. Leg., 1st Reg. Sess. (Me. 2019) (amending Sec. 1. 5 MRSA § 4572, sub-§ 1, ¶A (2019)).
- 10 A1094 (ACS), 218th Leg. (N.J. 2019) (amending N.J. Pub. L. 1945, § 11, c.169 (C.10:5-12) (2019)).
- 11 S.B. 6549, 2019-2020 Reg. Sess. (N.Y. 2019) (amending N.Y. LAB § 194-a (2019)).
- 12 H.B. 1696, 66th Leg., 2019 Reg. Sess. (Wa. 2019) (amending RCW § 2 49.58.005 (2019)).
- 13 H.B. 5386, 2018 Gen. Assemb., Leg. Sess. (Conn. 2018) (amending Conn. Gen. Stat. §§ 31-40z (2018)).
- 14 S.B. 2351, 29th Leg. Sess. (Haw. 2018) (amending Haw. Rev. Stat. Ch. 378 §1 (2018)).
- 15 H. 294, 2018 Gen. Assemb., Leg. Sess. (Vt. 2018) (amending 21 Vt. Stat. Ann. § 495m (2018)).
- 16 See Linda Babcock & Sara Laschever, *Women Don't Ask: Negotiation and the Gender Divide* (2003); Jenny Save Soderbergh, *Are Women Asking for Low Wages? Gender Differences in Wage Bargaining Strategies and Ensuring Bargaining Success*, SWEDISH INST. SOC. RES. WORKING PAPER SERIES 7/2007 10 (2007), available at https://ideas.repec.org/p/hhs/sofiwp/2007_007.html.
- 17 See, e.g., Hannah Riley Bowles, Linda Babcock & Kathleen L. McGinn, Constraints and Triggers: Situational Mechanics of Gender in Negotiations, 89 J. PERSONALITY & SOC. PSYCH. 951, 955-56 (2005).
- 18 A.B. 168, 2017 Reg. Sess. (Cal. 2017) (amending CAL. LAB. CODE § 432 (2017)).
- 19 S.B. 293, 2021 Reg. Sess. (Nv. 2021).
- 20 S.B. 270 (RI 2021).
- 21 H.B. 123, 2020 Leg., 441st Sess. (Md. 2020)
- 22 S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5 (2019)).
- 23 H.B. 1696, 66th Leg., 2019 Reg. Sess. (Wa. 2019) (amending RCW § 2 49.58 (2019)).
- 24 S.B. 1480, 101st Gen. Assemb. (Ill. 2021); S.B. 1847, 101st Gen. Assemb. (Ill. 2021).
- 25 S.B. 973, 2019-2020 Reg. Sess. (Cal. 2020)
- 26 Inst. for Women's Policy Research, *Private Sector Workers Lack Pay Transparency: Pay Secrecy May Reduce Women's Bargaining Power and Contribute to Gender Wage Gap* (2017), available at <https://iwpr.org/publications/private-sector-pay-secrecy/>.
- 27 S.B. 270 (RI 2021).
- 28 H.B. 14, 2020 Leg., 441st Sess. (Md. 2020)
- 29 H.B. 622, 2020 Gen. Assemb., Reg. Sess. (Va. 2020)
- 30 S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5-102 (2019)).
- 31 *Supra* note 7.
- 32 L.B. 217, 106th Leg. Sess. (Ne. 2019) (amending NFEPa § 48-1114). The new law contains a number of concerning exceptions that might conflict with the federal National Labor Relations Act.
- 33 S.B. 2351, 29th Leg. Sess. (Haw. 2018) (amending Haw. Rev. Stat. Ch. 378 §1 (2018)).
- 34 S.B. 104, 218th Leg., Reg. Sess. (N.J. 2018) (amending N.J. Pub. L. 1945, c.169 (2018)).
- 35 H.B. 1506, 65th Reg. Sess. (Wash. 2018) (amending Wash. Rev. Code § 49.12.175 (2018)).
- 36 S.B. 270 (RI 2021).
- 37 H.B. 225, 2019 Reg. Sess. (Al. 2019) (Act. 2019-519).
- 38 S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5-102 (2019)).
- 39 S.B. 5248, 2019-2020 Reg. Sess. (N.Y. 2019) (amending N.Y. LAB § 194 (2019)).
- 40 A1094 (ACS), 218th Leg. (N.J. 2019) (amending N.J. Pub. L. 1945, § 11, c.169 (C.10:5-12) (2019)).
- 41 H.B. 6380, 2021 Gen. Assemb., Leg. Sess. (Conn. 2021).
- 42 S.B. 270 (RI 2021).
- 43 S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5-102 (2019)).
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- 45 S.B. 5248, 2019-2020 Reg. Sess. (N.Y. 2019) (amending N.Y. LAB § 194 (2019)).
- 46 S.B. 104, 218th Leg., Reg. Sess. (N.J. 2018) (amending N.J. Pub. L. 1945, c.169 (2018)).
- 47 H.B. 1506, 65th Reg. Sess. (Wash. 2018) (amending Wash. Rev. Code § 49.12.175 (2018)).
- 48 For more information on the "factor other than sex" loophole, see <http://nwlc.org/resources/paycheck-fairness-closing-factor-other-sex-gap-equal-pay-act/>.
- 49 S.B. 270 (RI 2021).
- 50 S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5-102 (2019)).
- 51 H.B. 0834, 101st Gen. Assemb. (Ill. 2019) (amending 820 ILCS 112/10 (2019)).
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- 53** H.B. 1506, 65th Reg. Sess. (Wash. 2018) (amending Wash. Rev. Code § 49.12.175 (2018)).
- 54** NWLC, *SEX STEREOTYPES: HOW THEY HURT WOMEN IN THE WORKPLACE - AND IN THE WALLET* (2013), https://nwlc.org/wp-content/uploads/2015/08/suits_fact_sheet_-_sex_stereotypes_01.30.2013.pdf.
- 55** H.B. 1506, 65th Reg. Sess. (Wash. 2018) (amending Wash. Rev. Code § 49.12.175 (2018)).
- 56** S.B. 270 (RI 2021).
- 57** S.B. 19-085, 72nd Gen. Assemb. (Colo. 2019) (amending Colo. Rev. Stat. § 8-5-102 (2019)).
- 58** *Supra* note 7.
- 59** H.B. 790, 2019 Reg. Sess. (Md. 2019) (amending Md. Code § 3-308 (2019)).
- 60** S.B. 166, 2019 Reg. Sess. (Nv. 2019) (amending NRS 233 (2019)).
- 61** H.B. 0071, 2019 Gen. Sess. (Wy. 2019) (amending W.S. 27 4 304 (2019)).
- 62** S.B. 104, 218th Leg., Reg. Sess. (N.J. 2018) (amending N.J. Pub. L. 1945, c.169 (2018)).
- 63** H.B. 1506, 65th Reg. Sess. (Wash. 2018) (amending Wash. Rev. Code § 49.12.175 (2018)).
- 64** S.B. 104, 218th Leg., Reg. Sess. (N.J. 2018) (amending N.J. Pub. L. 1945, c.169 (2018)).
- 65** HB 1993, 2021 Special Session (Va. 2021).