

The Honorable Larry Hogan
Governor
State House
100 State Circle
Annapolis, Maryland 21401

The Honorable Boyd K. Rutherford
Lieutenant Governor
State House
100 State Circle
Annapolis, Maryland 21401

The Honorable Thomas V. Mike Miller, Jr.
President
Senate of Maryland
State House, H-107
Annapolis, Maryland 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, H-107
Annapolis, Maryland 21401

Re: MSAR # 10878 - 2018 Equal Pay Commission Report

Dear Governor Hogan, Lieutenant Governor Rutherford, President Miller, and Speaker Busch:

Maryland Annotated Code, Labor & Employment Article § 3-309, et seq., requires the Equal Pay Commission, housed within the Division of Labor and Industry, to annually submit a report on or before December 15. The 2018 report includes an assessment and analysis of wage disparities in Maryland, a summary of the commission's work, and a summary of laws implemented by other states.

The commission is comprised of members from Maryland's public and private sector. In 2018, members of the commission analyzed current case law and scholarly research to assess contemporary equal pay issues. Moreover, the commission collaborated with private sector entities and Goucher College to assess the impact of current policies, procedures, and laws across the nation.

For additional information regarding the report, please contact Matt Helminiak, Commissioner of Labor and Industry, at matt.helminiak@maryland.gov or (410) 767-2961.

Sincerely,

A handwritten signature in black ink that reads "James E. Rzepkowski". The signature is written in a cursive, flowing style.

James E. Rzepkowski,
Acting Secretary

2018 Equal Pay Commission Report

**Department of Labor, Licensing and Regulation
Division of Labor and Industry**

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I. Introduction

Maryland Annotated Code, Labor & Employment Article § 3-309, et seq., establishes the Equal Pay Commission (Commission), and requires the Commission, housed within the Maryland Division of Labor and Industry, to evaluate pay disparities in Maryland's public and private sectors.¹ Maryland law requires the Commission to:

1. Continually evaluate the extent of wage disparities in the public and private sectors in the State between individuals of one race, sex, or gender identity and individuals of another race, sex, or gender identity based on data analyses;
2. Establish a mechanism for the Commission to collect data from employers in the State to assist the Commission in its effort to evaluate the disparities listed in Item (1);
3. Develop a comprehensive strategy to determine and recommend best practices regarding equal pay for equal work to individuals, employers, and policymakers;
4. Study and make recommendations regarding whether and to what extent administrative and legal processes and remedies can be streamlined and harmonized across this subtitle and other employment anti-discrimination laws;
5. Develop partnerships with private sector entities and other public sector entities to identify:
 - A. Methods of developing a data collection mechanism;
 - B. Effective methods of outreach through which the Commission may raise the awareness of employers about the provisions of this subtitle; and
 - C. Potential funding sources to help the Division of Labor and Industry absorb costs associated with staffing the Commission and implementing the Commission's charge; and
 - D. Share data and findings with the Commissioner to assist in enforcement actions under this subtitle.
6. On or before December 15, 2017, and on or before December 15 of each year thereafter, the Commission shall submit a report to the Governor, and in accordance with § 2-1246 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee regarding any findings and recommendations, including any recommended legislation.

Established in 2016, the Commission currently consists of ten (10) members from diverse industries in the public and private sector. The Commission's staff includes employees from the Governor's Workforce Development Board and the Office of the Attorney General. Four (4) Commission meetings took place during 2018.

¹ Md. Code Ann., Lab & Empl. § 3-309 (2016).

This report is a joint effort between the members of the Commission. The report provides a summary of the Commission’s work in 2018 and the Commission’s goals moving forward.

II. Commission Membership

In accordance with Maryland law, members of the Commission represent Maryland’s public and private sectors. The Commission is comprised of the following individuals:

Member	Position/Organization
Kelly Schulz	Secretary, Department of Labor, Licensing & Regulation
Matthew Helminiak	Commissioner, Division of Labor and Industry
Glendora Hughes	General Counsel, Maryland Commission on Civil Rights
Patricia Baldwin	Secretary/Treasurer, Reliable Contracting, Inc.
Robin Walker	Director of Human Resources, Lion Brothers Company, Inc.
Jimmy Dulay	President, State Law Enforcement Officers Labor Alliance
Dr. Erin George	Assistant Professor of Economics, Hood College
Dr. Mileah Kromer	Director, Sarah T. Hughes Field Politics Center, Goucher College
Melissa R. Wells	Field Representative, Community Hub for Opportunities in Construction Employment
R. Deryl Butler	President, Butler Security, Inc.

*Interested parties from Maryland have consistently attended Commission meetings and provided valuable input.

III. Commission Goals

The Commission’s goals are to analyze wage disparities in the public and private sectors within Maryland, establish a mechanism for the Commission to gather data, develop a strategy to promote equal pay for equal work, address the potential to streamline legal processes and remedies, and develop fruitful private and public sector partnerships.

Over the course of four (4) meetings in 2018, the Commission analyzed current case law and scholarly articles to assess contemporary equal pay issues. Moreover, the Commission utilized the expertise of subject matter experts to ensure consideration of practical solutions to solve contemporary issues.

IV. Summary of the Commission’s Work in 2018

The Commission continues to research laws, policies, and scholarly sources to effect positive change for Maryland. In pursuit of this research, the Commission worked with diverse stakeholders to determine best practices for Maryland.

In March of 2018, members and staff of the Commission attended Dr. Mileah Kromer’s class at Goucher College. Matt Helminiak, Maryland’s Commissioner of Labor and Industry, provided Dr. Kromer’s class with a synopsis of the Commission’s work and contemporary equal pay issues.

In response to the Commission’s visit, students at Goucher College provided the Commission with scholarly research regarding equal pay. Specifically, the students provided the Commission with fifteen (15) scholarly sources that helped the Commission assess equal pay issues.² As a direct result of the students’ research, Dr. Mileah Kromer provided the Commission with a summary of the entirety of the research, and Commissioner Matt Helminiak led the Commission in a review of “A Grand Gender Convergence: Its Last Chapter.”³

In 2018, the Commission invited private sector stakeholders to discuss strategies that help to ensure pay equity. Self-audits, an employer’s internal review of salary structures, were a consistent topic of discussion during Commission meetings. The Commission came to a consensus that self-audits conducted by an attorney can provide businesses with a confidential review of compensation structures that helps businesses ensure internal pay equity.

V. Current State of Affairs

In 2018, the Commission worked to identify equal pay laws and policies implemented by other states and investigate if research has been done to study their effectiveness. The following is a summary of the Commission’s findings in 2018. No research studies have yet been published that address the effectiveness of these newly passed laws:

1. Massachusetts:

- A. Effective July 1, 2018, *An Act to Establish Pay Equity* amended the Massachusetts Equal Pay Act (MEPA).⁴ The amendment alters the definition of “comparable work” to “...work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions; provided, however, that a job title or job description alone shall not determine comparability.”⁵ Moreover, under MEPA, an employer cannot utilize

² See Appendix A.

³ Goldin C. A Grand Gender Convergence: Its Last Chapter. *American Economic Review*. 2014;104 (4) :1091-1119.

⁴ Chapter 177 of the Acts of 2016, MA (2016).

⁵ Chapter 177 of the Acts of 2016, § 105(a), MA (2016).

an employee's previous salary history as a defense to liability, and evidence of intent to discriminate is not required to establish an employer's liability.⁶

2. Minnesota:

- A. Pursuant to the *Women's Economic Security Act*, Minnesota created a grant program with the express goal of "...increase[ing] the number of women in high-paying, high-demand, nontraditional occupations."⁷
- B. Pursuant to the *Women's Economic Security Act*, no department or agency of the state may execute a contract in excess of \$500,000 with a contractor that has more than 40 full-time employees if the employer has not obtained an equal pay certificate. The certificate is valid for four years and certain exemptions for employers do apply.⁸

3. New York:

- A. Pursuant to Governor Cuomo's *Executive Order 162*, prime contractors, and any subcontractors to such prime contractors, on state contracts executed on or after June 1, 2017, must provide the State of New York with the gross wages of the employees working on the subject of the state contract.⁹

4. New Mexico:

- A. Pursuant to *Executive Order 2009-049*, entities with ten (10) or more employees that contract with executive branch agencies, solicited or awarded, must file a pay equity report as part of the request for proposal process.¹⁰ There is no requirement to report actual individual compensation or hours work, instead contractors must internally analyze their compensation structure in order to complete the report. The employer retains all information and may use said information to correct any inequities.

VI. A Review of Equal Pay in Maryland

In 2018, the Institute for Women's Policy Research (IWPR) provided a detailed analysis of earnings of Maryland women and men to the Commission. The report utilizes three years of pooled data from the American Community Survey (2014-2016).

The key findings of the report include:

- Maryland is ranked second in the nation in terms of women's median annual earnings for full-time year round work (\$50,000) and has the second highest ratio of women's to

⁶ Overview of an Act to Establish Pay Equity, Massachusetts Office of the Attorney General, see:

<https://www.mass.gov/files/documents/2018/05/02/AGO%20Equal%20Pay%20Act%20Guidance%20%285-2-18%29.pdf>

⁷ Article 1, Sec. 3, Subd. 2, Grant Program, MN Statutes (2012).

⁸ Article 1, Sec. 6, 363A.44, Equal Pay Certificate, MN (October 5, 2014).

⁹ Executive Law Article 15-A, N.Y. (Jan. 1, 2017).

¹⁰ Executive Order 2009-049, Fair and Equal Pay for All New Mexicans, (December 18, 2009).

men's earnings (83.3 percent). Moreover, women in Maryland experience smaller earnings gaps than women in the United States as a whole.

- Women are more educated on average than men in the state.
- The earnings of single women and men without children are very similar. Among full-time, year-round workers, single women actually earn more than single men.
- Older women and men experience larger differences in median earnings than younger workers.
- Though there are several potential explanations for why women earn less than men, a wage decomposition reveals that over 50 percent of the difference between the wages of women and men cannot be explained by differences in the characteristics measured in the survey.¹¹

The report provides data regarding Maryland's workforce, a statistical analysis of Marylanders' earnings, and a statistical decomposition of pay gaps in Maryland.

VII. Key Findings

Maryland Annotated Code, Labor & Employment Article § 3-309(h), et seq., tasks the Commission with finding and recommending best practices regarding equal pay for equal work. The best practices discussed by the Commission in 2018 can be summarized into four key findings. The Equal Pay Commission's findings and recommendations are as follows:

- Key Finding 1: The Commission has identified the salary negotiation process as a possible element of the unexplained pay gap.
 - Recommendation 1: American Job Centers (AJCs) provide services to Marylanders seeking employment and career development and are uniquely positioned to offer valuable negotiation skills training. The Commission recommends researching ways to incorporate negotiation skills training at American Job Centers.
- Key Finding 2: Apprenticeships and other full-time jobs that include on-the-job training and classroom instruction that allow participants to earn while they learn is a proven example of a workforce system that increases job skills, education levels, and salaries. Maryland currently has more than 10,000 apprentices enrolled in more than 150 registered apprenticeship programs. Each program provides a defined pay schedule that is approved and regulated by the Maryland Apprenticeship and Training Council and is based on the ability to demonstrate skills acquired, not on gender, race, or ethnicity.

¹¹ *An Analysis of the Earnings of Women and Men in Maryland: Report to the Maryland Equal Pay Commission*, Jessica Mill, Ph.D., Institute for Women's Policy Research (Oct. 19, 2018).

- Recommendation 2: As of December 21, 2018, there are 451 total women apprentices, up 48% from 2014. The Commission recommends continuing to partner with the DLLR Registered Apprenticeship sponsors to promote opportunities and remove barriers to ensure that non-traditional participants have access to Registered Apprenticeship and Pre-Apprenticeship programs as a viable career goal.

Example: In 2018, the Governor’s Workforce Development Board coordinated with the SANS Institute to facilitate the GirlsGoCyberStart Initiative in Maryland. The initiative focused on connecting female high school students in Maryland to careers in cybersecurity. Over 400 female students participated in the cybersecurity challenge. Teams from Maryland finished first and second nationally in the competition.

- Key Finding 3: The Commission has identified English language proficiency as a barrier to pay equity.¹²
 - Recommendation 3: Promote opportunities to ensure that Marylanders are aware of programs that facilitate improving English language proficiency.
- Key Finding 4: Self-audits are a way for businesses to conduct an internal review of salary structures, normally conducted in conjunction with an attorney to preserve confidentiality.
 - Recommendation 4: Explore ways to encourage businesses to conduct self-audits.

VIII. Future Goals

Pursuant to Md. Code Ann., Lab & Empl. § 3-309(h), the Commission will continue to explore and identify opportunities to form valuable partnerships with Maryland stakeholders and seek to gather additional data to continue evaluating pay disparities in Maryland’s public and private sectors. Moreover, the Commission will continue to research current laws, policies, and scholarly sources to evaluate and make additional recommendations regarding Maryland’s legal procedures and remedies.

¹² *An Analysis of the Earnings of Women and Men in Maryland: Report to the Maryland Equal Pay Commission*, Jessica Mill, Ph.D., Institute for Women’s Policy Research (Oct. 19, 2018).

Appendix:

Goal: Assess research on pay equity to provide additional framework for future committee reports and policy suggestions.

Key Overview Sources: These sources provide a broad overview of the pay equity academic research:

1. Goldin, Claudia. "A grand gender convergence: Its last chapter." *American Economic Review* 104, no. 4 (2014): 1091-1119.
2. Mandel, H., & Semyonov, M. (2016). Going Back in Time? Gender Differences in Trends and Sources of the Racial Pay Gap, 1970 to 2010. *American Sociological Review*, 81(5), 1039-1068.
3. Economic Policy Institute. (2018). "Women's work" and the gender pay gap: How discrimination, societal norms, and other forces affect women's occupational choices—and their pay.
4. Hegewisch, A., & Williams-Baron, E. (2017). The Gender Wage Gap and Work-Family Supports: Women's Choices or Policy Choices?. *St. Louis University Public Law Review*, 36(1), 5-17.
5. Waldfogel, J. (1998). Understanding the "family gap" in pay for women with children. *Journal of Economic Perspectives*, 12(1), 137-156.
6. Olivetti, Claudia, and Barbara Petrongolo. 2017. "The Economic Consequences of Family Policies: Lessons from a Century of Legislation in High-Income Countries." *Journal of Economic Perspectives*, 31 (1): 205-30.
7. Maume, D. J. (2016). Can men make time for family? Paid work, care work, work-family reconciliation policies, and gender equality. *Social Currents*, 3(1), 43-63.
8. Killewald, A., & Bearak, J. (2014). Is the motherhood penalty larger for low-wage women? A comment on quantile regression. *American Sociological Review*, 79(2), 350-357.
9. England, P., Bearak, J., Budig, M. J., & Hodges, M. J. (2016). Do highly paid, highly skilled women experience the largest motherhood penalty?. *American Sociological Review*, 81(6), 1161-1189.
10. Leibbrandt, A., & List, J. A. (2014). Do women avoid salary negotiations? Evidence from a large-scale natural field experiment. *Management Science*, 61(9), 2016-2024.
11. Kim, M. (2015). Pay Secrecy and the Gender Wage Gap in the United States. *Industrial Relations*, 54(4)
12. Prokos, A., & Padavic, I. (2005, August). An Examination of Competing Explanations for the Pay Gap among Scientists and Engineers. *Gender and Society*, 19(4), 523-543.

13. Petersen, T., & Morgan, L. A. (1995). Separate and Unequal: Occupation-Establishment Sex Segregation and the Gender Wage Gap. *The American Journal of Sociology*, 101(2), 329-365.
14. Mandel, H., & Semyonov, M. (2014). Gender Pay Gap and Employment Sector: Sources of Earnings Disparities in the United States, 1970-2010. *Demography*, 51(5), 1597-1618
15. Kossek, E. E., & Lautsch, B. A. (2018). Work–Life Flexibility for Whom? Occupational Status and Work–Life Inequality in Upper, Middle, and Lower Level Jobs. *Academy of Management Annals*, 12(1), 5-36.

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