

January 6, 2019

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 William Ferguson
President
Senate of Maryland
State House, H-107
Annapolis, Maryland 21401

The Honorable Adrienne Jones
Speaker
Maryland House of Delegates
State House, H-107
Annapolis, Maryland 21401

Re: MSAR # 10878 - 2019 Equal Pay Commission Report

Dear Governor Hogan, Lieutenant Governor Rutherford, President Ferguson, and Speaker Jones:

Maryland Annotated Code, Labor & Employment Article § 3-309, et seq., requires the Equal Pay Commission, in the Division of Labor and Industry, to annually submit a report on or before December 15.

The Commission is comprised of members from Maryland's public and private sector. In 2019, members of the commission analyzed current case law, scholarly research, and the current policies and procedures from other states who have worked on their own equal pay challenges. The 2019 report includes key findings and best practice recommendations derived from a review of the best practices and laws from industry and other states.

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,



Tiffany P. Robinson,
Secretary

2019 Equal Pay Commission Report

**Department of Labor
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, in 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 all available data;
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 eight (8) members from diverse industries in the public and private sectors. Two members, Dr. Erin George and Dr. Mileah Kromer, left the Commission in 2019 and replacements have not yet been named. The Commission's staff includes employees from the Division of Labor and Industry, the Governor's

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

Workforce Development Board and the Office of the Attorney General. Three (3) Commission meetings took place during 2019.

This report is a joint effort between the members of the Commission and Commission staff. The report provides a summary of the Commission’s work in 2019 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 has been comprised of the following individuals:

| Member | Position/Organization | Position name: |
|--------------------|--|--|
| Tiffany Robinson | Secretary, Department of Labor | Secretary of Labor or Designee |
| Matthew Helminiak | Commissioner, Division of Labor and Industry | Commissioner of Labor or Designee |
| Glendora Hughes | General Counsel, Maryland Commission on Civil Rights | Executive Director of the Commission on Civil Rights or Designee |
| Patricia Baldwin | Secretary/Treasurer, Reliable Contracting, Inc. | Business |
| Robin Walker | Director of Human Resources, Lion Brothers Company, Inc. | Business |
| Jimmy Dulay | President, State Law Enforcement Officers Labor Alliance | Labor Organization |
| Dr. Erin George* | Assistant Professor of Economics, Hood College | Higher Education/Research |
| Dr. Mileah Kromer* | Director, Sarah T. Hughes Field Politics Center, Goucher College | Higher Education/Research |
| Melissa R. Wells | Field Representative, Community Hub for Opportunities in Construction Employment | Labor Organization |
| R. Deryl Butler | President, Butler Security, Inc. | Business |

*Drs. George and Kromer resigned from the Commission during 2019 and replacements have not yet been named.

**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 three (3) meetings in 2019, the Commission analyzed current case law and the equal pay initiatives proposed in other states to address contemporary equal pay issues.

IV. Summary of the Commission's Work in 2019

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

Commission activity in the previous years has focused on data analysis of both Maryland public sector executive branch employees' compensation and private sector pay disparities. It was determined that the total gender wage gap in public sector executive branch employees is less than 6% when factors such as job classification and years of service are accounted for. The data analysis of all Maryland employees based upon census data that was conducted in 2018 estimated a gender wage gap among full-time, year-round employees of 17.2%. Sources of data that take into account all of the explanatory factors that may determine an employee's compensation such as educational attainment, years of experience and hours worked per year are not available for all Maryland workers, so further study of the data of Maryland workers' gender wage gap is not possible with current data availability.

Commission staff has worked with the Society of Human Resource Management (SHRM) to help identify best practices and relevant legislation in other states. In particular, staff learned about best practice documentation from New York and pay equity legislation from Massachusetts, in consulting with SHRM's vice president of state strategy and engagement. Staff also spoke with legal practitioners in the states referred by SHRM.

Other states have passed laws in recent years that seek to address equal pay issues. In 2018 and 2019, the Commission worked to identify equal pay laws and policies implemented by other states and investigated if research has been done to study their effectiveness. No research studies have yet been published that address the effectiveness of these newly passed laws. It was determined that due to the recency of these laws, there is likely not enough data

for researchers to study and no scholarly papers were found that show which laws are effective in furthering the goal of pay equity.

As it was in 2018, employer self-audits, an employer's internal review of salary structures, were a consistent topic of discussion during the 2019 Commission meetings. The Commission came to a consensus that self-audits, often conducted with the assistance of an attorney, can provide businesses with a confidential review of compensation structures that help a business ensure internal pay equity.

In each of the meetings of 2019, the Commission members reviewed laws and best practices that are being proposed and implemented in other jurisdictions. New York City² and the State of Massachusetts both have publications on pay equity that were particularly helpful. The Commission recommends that an employer consider implementing certain best practices that may help discover or avoid pay disparities.

V. 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 Equal Pay Commission's best practice suggestions can be summarized into three key findings with recommendations to address these findings. They are as follows:

- Key Finding 1: Recruitment and hiring practices may be biased, even unintentionally. There are several strategies that private and public sector companies can use to minimize these biases.
 - Recommendation 1: Use gender neutral language in job postings. Using language that conveys an employer's preference for a particular gender can result in an applicant pool that favors a particular gender and could deprive the employer of potentially qualified candidates. When unemployment is at historic lows and qualified candidates are in high demand, attracting as many qualified candidates as possible is not just good practice, it's smart business.
 - Recommendation 2: Use name and gender-blind application processes. Limiting the access to applicant names and genders during the application process has been shown to increase the diversity of qualified applicant pools and could help level the playing field for all applicants.
 - Recommendation 3: Use structured interview questions and a diverse interview panel. In Maryland State executive branch hiring, structured interview questions

²<https://www1.nyc.gov/assets/genderequity/downloads/pdf/Pay-Equity-Brochure.pdf>

and a gender and racially diverse interview panel are already best practices in use. This may contribute to the low gender pay disparity in State executive branch employment and is a best practice recommended by the Equal Pay Commission. An employer should develop interview questions based upon the job-related requirements of the particular job and ask all applicants those same questions in the interview. The interviews, where possible, should be conducted by a diverse interview panel representing a variety of skills and experiences.

- Key Finding 2: Self-audits and self-evaluations are a way for private sector employers and state, county and municipal government employers 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. The State of Massachusetts “Act to Establish Pay Equity”, effective July 1, 2018, recommends employer self-evaluations as a way to discover pay inequities within a company. Self-evaluations are not required under Massachusetts law, but to incentivize employers to conduct them, the law provides a “safe harbor” for employers that do perform them. According to their Office of the Attorney General guidance document³, “The Massachusetts Equal Pay Act” provides a complete defense to a legal claim for any employer that has conducted a good faith, reasonable self-evaluation of its pay practices within the previous three years and before an action is filed against it.”
- Key Finding 3: Time spent at the workplace is positively correlated with earnings, resulting in lower earnings for employees who are at the workplace for less hours. The primary caregiver in a family needs flexibility to take care of family members, so they will often seek jobs that offer temporal flexibility. As was shown in Claudia Goldin’s “A Grand Gender Convergence: Its Last Chapter,”⁴, The solution does not necessarily have to involve government intervention, but it may require changes within the labor market. As stated in the study, “The gender gap in pay would be considerably reduced and might vanish altogether if firms did not have an incentive to disproportionately reward

³<https://www.mass.gov/files/documents/2018/05/02/AGO%20Equal%20Pay%20Act%20Guidance%20%285-2-18%29.pdf>

⁴ Goldin, Claudia. "A grand gender convergence: Its last chapter." *American Economic Review* 104, no. 4 (2014): 1091-1119.

individuals who labored long hours and worked particular hours.”

- Recommendation 5: Institute flexible working arrangements where possible to allow employees the ability to tend to caregiver needs. This could include schedules that start later or earlier than standard hours, as well as working from non-office locations when plausible.

VI. 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.

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