



WOMEN'S BUREAU  
U.S. DEPARTMENT OF LABOR

# FACT SHEET

## PAY SECRECY

In 2012, women who worked year-round, full-time earned seventy-seven cents (77¢) for every dollar their male counterparts earned.<sup>i</sup> Women's median earnings are lower than men's in nearly all occupations, whether they work in occupations predominantly held by women, occupations predominantly held by men, or occupations with a more even composition of men and women.<sup>ii</sup>

Pay secrecy policies serve to perpetuate these disparities. In 2010, nearly half of all workers nationally reported that they were either contractually forbidden or strongly discouraged from discussing their pay with their colleagues, according to results from a 2010 Institute for Women's Policy Research/Rockefeller Survey of Economic Security.<sup>iii</sup> Prohibiting or discouraging any discussion of wages in the workplace is far more widespread in the private than in the public sector.<sup>iv</sup> In this survey, 23.1 percent of private sector workers reported that discussion of wages and salaries was formally prohibited and an additional 38.1 percent reported that such discussion was discouraged by managers.<sup>v</sup>

On April 8, 2014, President Barack Obama issued an executive order prohibiting Federal contractors, subcontractors and federally assisted construction contractors from discharging or in any other manner discriminating against any employee or applicant for employment because the employee or applicant inquired about, discussed, or disclosed his or her compensation to another employee or applicant. The Administration has also endorsed the Paycheck Fairness Act, which would, in part, prohibit employer retaliation against an employee for inquiring about, discussing, or disclosing his or her wages or those of another employee in response to a complaint or charge, or in furtherance of a sex discrimination investigation, proceeding, hearing, or action, or an investigation conducted by the employer.

Section 7 of the National Labor Relations Act (NLRA) protects non-supervisory employees who are covered by the Act from employer retaliation when they discuss their wages or working conditions with their colleagues as part of a concerted activity to improve them, even if there is no union or other formal organization involved in the effort. These employee rights are enforced by the National Labor Relations Board (NLRB). Nevertheless, the NLRA does not address all situations where employers prohibit or discourage employees from discussing their pay with their colleagues.<sup>vi</sup>

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The 1980s saw the introduction of the first two state laws to address employer wage secrecy policies. In 1982, Michigan enacted a law which prohibited employers from doing any of the following: require as a condition of employment non-disclosure by an employee of his or her wages; require an employee to sign a waiver or other document which purports to deny an employee the right to disclose his or her wages; and discharge, formally discipline, or otherwise discriminate against an employee for job advancement on the basis of having disclosed his or her wages. In 1985, California enacted a similar law.

Between 2000 and 2014 eight additional states--Colorado, Illinois, Louisiana, Maine, Minnesota, New Jersey, Vermont, and New Hampshire--enacted "pay secrecy" laws. The language of the state laws is attached.

<sup>i</sup> *Facts for Features: Women's History Month: March 2014*, U.S. Bureau of the Census, February 11, 2014.

<sup>ii</sup> *Pay Secrecy and Wage Discrimination*, Institute for Women's Policy Research, June 2011.

<sup>iii</sup> ID

<sup>iv</sup> ID

<sup>v</sup> ID

<sup>vi</sup> *Combating Punitive Pay Secrecy Policies*, National Women's Law Center, April 2012.



### **California: Labor Code, Section 232**

"No employer may do any of the following:

- a. Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages.
- b. Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages.
- c. Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages."

### **Colorado: Senate Bill 08-122, approved 4/17/08**

Sec. 1. 24-34-402(1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-402. Discriminatory or unfair employment practices.

(1) It shall be a discriminatory or unfair employment practice:

- (i) UNLESS OTHERWISE PERMITTED BY FEDERAL LAW, FOR AN EMPLOYER TO DISCHARGE, DISCIPLINE, DISCRIMINATE AGAINST, COERCE, INTIMIDATE, THREATEN, OR INTERFERE WITH ANY EMPLOYEE OR OTHER PERSON BECAUSE THE EMPLOYEE INQUIRED ABOUT, DISCLOSED, COMPARED, OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGES; TO REQUIRE AS A CONDITION OF EMPLOYMENT NONDISCLOSURE BY AN EMPLOYEE OF HIS OR HER WAGES; OR TO REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER DOCUMENT THAT PURPORTS TO DENY AN EMPLOYEE THE RIGHT TO DISCLOSE HIS OR HER WAGE INFORMATION. THIS PARAGRAPH (i) SHALL NOT APPLY TO EMPLOYERS WHO ARE EXEMPT FROM THE PROVISIONS OF THE 'NATIONAL LABOR RELATIONS ACT,' 29 U.S.C. SEC. 151 ET SEQ.

### **Illinois: ST CH 820 § 112/10**

Sec. 10. Prohibited Acts.

(b) It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this Act [Equal Pay Act of 2003]. It is unlawful for any employer to discharge or in any other manner discriminate against any individual for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any person to exercise his or her rights under this Act.

### **Louisiana: Chapter 6-A (Louisiana Equal Pay for Women Act) of Title 23 of the Louisiana Revised Statutes of 1950**

§664. Prohibited acts

D. It shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under this Chapter. It shall be unlawful for any employer to discriminate, retaliate, or take any adverse employment action, including but not limited to termination or in any other manner discriminate against any employee for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any other employee to exercise his or her rights under this Chapter.

Note: This Act applies only to any department, office, division, agency, commission, board, committee or other organizational unit of the state.

### **Maine: Chapter 29, S.P. 33 – L.D. 84, An Act to Ensure Fair Pay, effective 9/12/09**

Sec.1. 26 MRSA Sec. 628, first paragraph, as amended by PL 2001, c. 304, Sec. 2, is further amended to read:

"An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility. Differentials that are paid pursuant to established seniority systems or merit increase systems or difference in the shift or time of the day worked that



do not discriminate on the basis of sex are not within this prohibition. **An employer may not discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this section. An employer may not prohibit an employee from disclosing the employee's own wages or from inquiring about another employee's wages if the purpose of the disclosure or inquiry is to enforce the rights granted by this section. Nothing in this section creates an obligation to disclose wages."**

**Michigan: Mich. Comp. Laws Section 408.483a**

408.483a Prohibited conduct.

Sec. 13a. (1) An employer shall not do any of the following:

- (a) Require as a condition of employment nondisclosure by an employee of his or her wages.
- (b) Require an employee to sign a waiver or other document which purports to deny an employee the right to disclose his or her wages.
- (c) Discharge, formally discipline, or otherwise discriminate against for job advancement an employee who discloses his or her wages.

This provision was added to Act 390 of 1978, Payment of Wages and Fringe Benefits, by Act 524 of 1982, effective March 30, 1983.

**Minnesota: Ch. 239—H.F. No. 2536**

Article 3. Labor Standards and Wages

Sec. 2. [181.172] WAGE DISCLOSURE PROTECTION.

(a) An employer shall not:

- (1) require nondisclosure by an employee of his or her wages as a condition of employment;
- (2) require an employee to sign a waiver or other document which purports to deny an employee the right to disclose the employee's wages; or
- (3) take any adverse employment action against an employee for disclosing the employee's own wages or discussing another employee's wages which have been disclosed voluntarily.

(b) Nothing in this section shall be construed to:

(1) create an obligation on any employer or employee to disclose wages;

(2) permit an employee, without the written consent of the employer, to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege or protected by law;

(3) diminish any existing rights under the National Labor Relations Act under United States Code, title 29; or

(4) permit the employee to disclose wage information of other employees to a competitor of their employer.

(c) An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this section.

(d) An employer may not retaliate against an employee for asserting rights or remedies under this section.

(e) An employee may bring a civil action against an employer for a violation of paragraph (a) or (d). If a court finds that an employer has violated paragraph (a) or (d), the court may order reinstatement, back pay, restoration of lost service credit, if appropriate, and the expungement of any related adverse records of an employee who was the subject of the violation.

**New Hampshire: S.B. 207; Title XXIII, Chapter 275**

Sec. 275:38-a Non-Retaliation Provision

- I. No employer shall discharge or in any other manner discriminate against any employee because he or she:
  - (b) Inquired about, discussed, or disclosed his or her wages or those of another employee.

Sec. 275:41-b Pay Disclosure

- I. No employer shall require the following as a condition of employment:
  - (a) That an employee refrain from disclosing the amount of his or her wages.
  - (b) That an employee sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages, salary, or paid benefits.
- II. No employer shall discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages, salary, or paid benefits.



## **New Jersey:**

### Title 10. Civil Rights

Sec. 10:5-12. Unlawful employment practices, discrimination.

11. It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

r. For any employer to take reprisals against any employee for requesting from any other employee or former employee of the employer information regarding the job title, occupational category, and rate of compensation, including benefits, of any employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of any employee or former employee of the employer, regardless of whether the request was responded to, if the purpose of the request for the information was to assist in investigating the possibility of the occurrence of, or in taking of legal action regarding, potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits. Nothing in this subsection shall be construed to require an employee to disclose such information about the employee herself to any other employee or former employee of the employer or to any authorized representative of the other employee or former employee.

## **Vermont: Title 21 (Labor), Chapter 5 (Employment Practices), Sec. 495 (Unlawful Employment Practices).**

Sec. 495(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

(7)(B)(i) No employer may do any of the following:

(I) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

(II) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

(ii) Unless otherwise required by law, an employer may prohibit a human resources manager from disclosing the wages of other employees.

(8) Retaliation prohibited. An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against any employee because the employee:

(D) has disclosed his or her wages or has inquired about or discussed the wages of other employees.

Women's Bureau, U.S. Department of Labor, August 2014.

## CONTACT US

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