



WOMEN'S BUREAU
U.S. DEPARTMENT OF LABOR

ISSUE BRIEF



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.⁵

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 or the compensation of other employees or applicants. 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

PAY SECRECY

In 2014, women who worked year-round, full-time earned seventy-nine cents (79¢) for every dollar their male counterparts earned.¹ 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.²

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.³ Prohibiting or discouraging any discussion of wages in the workplace is far more widespread in the private than in the public sector.⁴ In this survey, 23.1 percent of

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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.⁶

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 2015 eleven additional states – Colorado, Connecticut, Illinois, Louisiana, Maine, Minnesota, New Hampshire, New Jersey, New York, Oregon, and Vermont – enacted “pay secrecy” laws and California expanded its 1985 law. The language of the state laws is attached.



CALIFORNIA

CAL. LAB. CODE § 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.

CAL. LAB. CODE § 1197.5(j)

- (j) (1) An employer shall not discharge, or in any manner discriminate or retaliate against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this section. An employer shall not prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this section. Nothing in this section creates an obligation to disclose wages.
- (2) Any employee who has been discharged, discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this section may recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief.
- (3) A civil action brought under this subdivision may be commenced no later than one year after the cause of action occurs.

COLORADO

COLO. REV. STAT. ANN. § 24-34-402(1)(i)

(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.

CONNECTICUT

Conn. Acts 15-196 (Reg. Sess.)

Sec. 1.

(b) No employer shall:

- (1) Prohibit an employee from disclosing or discussing the amount of his or her wages or the wages of another employee of such employer that have been disclosed voluntarily by such other employee;
- (2) Prohibit an employee from inquiring about the wages of another employee of such employer;
- (3) Require an employee to sign a waiver or other document that denies the employee his or her right to disclose or discuss the amount of his or her wages or the wages of another employee of such employer that have been disclosed voluntarily by such other employee;
- (4) Require an employee to sign a waiver or other document that denies the employee his or her right to inquire about the wages of another employee of such employer;



- (5) Discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who discloses or discusses the amount of his or her wages or the wages of another employee of such employer that have been disclosed voluntarily by such other employee; or
- (6) Discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who inquires about the wages of another employee of such employer.
- (c) Nothing in this section shall be construed to require any employer or employee to disclose the amount of wages paid to any employee.
- (d) An action to redress a violation of subsection (b) of this section may be maintained in any court of competent jurisdiction by any one or more employees. An employer who violates subsection (b) of this section may be found liable for compensatory damages, attorney's fees and costs, punitive damages and such legal and equitable relief as the court deems just and proper.
- (e) No action shall be brought for any violation of subsection (b) of this section except within two years after such violation.

ILLINOIS

820 ILL. COMP. STAT. 112/10(b)

- (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

LA. REV. STAT. ANN. § 23:664

- 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.

MAINE

ME. REV. STAT. ANN. tit. 26 § 628

...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 ANN. § 408.483a(13a)(1)

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.



MINNESOTA

MINN. STAT. § 181.172

- (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

N.H. REV. STAT. ANN. § 275:38-a

- 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.
- II. This section shall not apply to any employee who has access to the wage information of other employees as a part of such employee's essential job functions who discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under RSA 275:41-a including an investigation conducted by the employer. Nothing in this section shall be construed to limit the rights of an employee provided under any other provision of law.

N.H. REV. STAT. ANN. § 275:41-b

- 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

N.J.S.A. 10:5-12(r)

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.

NEW YORK

N.Y. LAB. Law § 194(1)

- Sec. 1.
- 4. (a) No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee.
 - (b) An employer may, in a written policy provided to all employees, establish reasonable workplace and workday limitations on the time, place and manner for inquires about, discussion of, or the disclosure of wages. Such limitations shall be consistent with standards promulgated by the commissioner and shall be consistent with all other state and federal laws. Such limitations may include prohibiting an employee from discussing or disclosing the wages of another employee without such employee's prior permission.
 - (c) Nothing in this subdivision shall require an employee to disclose his or her wages. The failure of an employee to adhere to such reasonable limitations in such written policy shall be an affirmative defense to any claims made against an employer under this subdivision, provided that any adverse employment action taken by the employer was for failure to adhere to such reasonable limitations and not for mere inquiry, discussion or disclosure of wages in accordance with such reasonable limitations in such written policy.
 - (d) This prohibition shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee's essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge, or in furtherance of an investigation, proceeding, hearing, or action under this chapter, including an investigation conducted by the employer.
 - (e) Northing in this section shall be construed to limit the rights of an employee provided under any other provision of law or collective bargaining agreement.



OREGON

OR. REV. STAT. § 659A

Sec. 2.

- (1) It is an unlawful employment practice for an employer to discharge, demote or suspend, or to discriminate or retaliate against, an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee has:
- (a) Inquired about, discussed or disclosed in any manner the wages of the employee or of another employee;
 - or
 - (b) Made a charge, filed a complaint or instituted, or caused to be instituted, an investigation, proceeding, hearing or action based on the disclosure of wage information by the employee.
- (2) This section does not apply to an employee who has access to wage information of employees as part of the job functions of the employee's position and discloses the wages of those employees to individuals not authorized access to the information, unless the disclosure is in response to a charge or complaint or is in furtherance of an investigation, proceeding, hearing or action, including but not limited to an investigation conducted by the employer.

VERMONT

Vt. STAT. ANN. tit. 21, § 495(a)(7)(8)

- (a)(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.



- ¹ Current Population Reports: Income and Poverty in the United States: 2014, U.S. Census Bureau, September 2015.
- ² Pay Secrecy and Wage Discrimination, Institute for Women's Policy Research, June 2011.
- ³ Ibid.
- ⁴ Ibid.
- ⁵ Ibid.
- ⁶ Combating Punitive Pay Secrecy Policies, National Women's Law Center, April 2012.

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