

Meeting Minutes – Conference Call [DRAFT]

September 24, 2019 1:00 to 2:00 PM

Maryland Equal Pay Commission

1100 North Eutaw Street, Suite 600, Baltimore, MD 21201

MEMBERS PRESENT

Matt Helminiak

Tricia Baldwin

Robin Walker

Wendy Kahn

Melissa Wells

GUESTS

STAFF

Jenny Baker

Ken Lemberg

Kaitlin Marsden

Grason Wiggins

Introductions and Opening Remarks

Matt Helminiak, Maryland Commissioner of Labor and Industry, welcomed the members of the Commission, and all members, guests, and staff introduced themselves.

Commissioner Helminiak indicated that we are trying to find college professors to replace the Equal Pay Commission vacancies left upon the resignations of Mileah Kromer and Erin George. There are three slots open on the Commission and could also use members with a pay equity and statistician background.

Discussion

Matt indicated that an annual report needs to be submitted by December 15, 2019, with policy recommendations and best practices. The workgroup was given the opportunity to review documentation from New York (primarily best practices) and from Massachusetts (passed legislation), obtained through the Society for Human Resource Management.

The Massachusetts law was essentially a guidance document for how to do a pay equity self-audit. A self-audit is to done with an attorney and can be used as an affirmative defense in case of lawsuit for violation of pay equality law. However, if there is a pay disparity between genders, this must now be addressed and a reasonable effort made to fix it.

The Maryland Equal Pay law simply requires both genders to receive the same pay for the same, comparable work. The Massachusetts law goes a step further with an employer affirmative defense of a self-audit conducted in the past three years and a reasonable effort to address any disparity.

Melissa indicated that Maryland should have language for the employer's benefit to comply; otherwise there could be potential "chaos." Robin said that there needed to be an affirmative defense in order for employers to do the self-audit and furthermore a reason to do it. For example, Maryland Occupational Safety and Health (MOSH) will provide consultation to protect employees and will provide for an affirmative defense.

Matt communicated that last year there was legislative research, on the part of Dr. Kromer's students, on other states' laws. These laws were not around long enough to demonstrate outcomes.

With regard to a Maryland salary history ban law, the bill did not pass last session. A best practice could be to just not ask for salary history when hiring.

Melissa asked if the Maryland pay equity bill exempted state employees.

Matt reminded the group that two years ago there was data analysis conducted of executive branch employees, with about a five percent unexplained pay gap between genders. Private sector employees could be hired in a similar fashion as with state employees, where there are three-member interviewing panels that are structured and diverse. Tricia liked the idea of mirroring this aspect of public sector hiring.

The Commission could continue to recognize best practices. For example, as a good first step in screening/hiring, private sector employers could have names and genders removed early in the process, so as to be more "gender blind" in selection.

Another best practice could be to not have an employer ask for past salary when hiring. This possibly will come up in a future legislative session, as it has already come up the past two years. As Melissa echoed, the idea is to focus salary even more on merit and qualifications. It was felt that this could be "cleaner" with banning salary history questions for incoming/new hires, rather than incumbent/current employees (in part due to situations where a collective bargaining agreement locks in pay increases by tenure); at the point of hire, the public would essentially need to know what a job pays. Matt said that the bill from two years ago required employers to not take salary into account for employee promotions as well as for new hires.

The best practice of an employer pay equity audit was discussed and is commonly presented in best practices and legislative documentation from New York and Massachusetts respectively, among other sources. Although it can serve as an affirmative defense, as in Massachusetts law, the issue could then be what an employer is to do if there is a pay equity problem identified – there would be a need to act on this concern.

Other best practice ideas were discussed and summarized. Generous paid leave policies was mentioned. There could be gender neutral language in job postings, with a gender blind selection process. Melissa indicated that there could be further privacy and etiquette around sick leave taken for family members, where women are often primary caretakers. Robin communicated that in her company there is paid time off (PTO) provided, without asking the employee as to why it is being taken. With employers overall, there could be caregiver flexibility, thereby minimizing the penalty for primary caregivers. A study mentioned in last year's report had noted longer hours at the office correlated with more career visibility.

There was a brief discussion about the merits of telework, in changing employer cultures, but some industries, such as manufacturing and construction, require that the worker be physically present at the job site. Temporal flexibility, in terms of time and place, could suffice in certain industries and help address pay equity issues.

Matt and Robin reiterated the best practice of an employer pay equity self-audit, involving legal counsel. Wendy referenced this practice as a tool for employer knowledge/education. Massachusetts has put

the self-audit as an affirmative defense to potential lawsuit into its law, with a three-year window of legal protection during that time. The Massachusetts system could be referenced, along with how it has been implemented. There is little appetite for creating additional liability, but the Massachusetts self-audit as an affirmative defense could be a "carrot" to conducting such an audit. The New York report on best practices could also be referenced, as we have discussed much of them.

Next steps, besides an October conference call, would include needing to get more people on the Commission and producing an annual report by December 15.

The next Commission meeting will be conducted by conference call. This is anticipated for October 21, 2019 at 1:00.

Submitted by:

Ken Lemberg, Deputy Director, Governor's Workforce Development Board