

## New Mexico Enacts Equal Pay Law, Prohibiting Sex-Based Wage Discrimination, Giving Direct Court Action

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New Mexico's new equal pay law, the Fair Pay for Women Act ("FPWA"), prohibits wage discrimination based on an employee's sex and allows employees to bring wage discrimination claims directly in court, without first filing with any administrative agency. Signed by Governor Susan Martinez, the FPWA applies to all employers with at least four employees and takes effect in June 2013. Remedies under the FPWA are expansive and include injunctive relief, damages, attorney's fees, punitive damages, and potential treble damages.

### Wage Discrimination Prohibited

The FPWA prohibits employers from paying wages to employees at a rate that is less than the rate the employer pays to employees of the opposite sex for equal work on jobs requiring equal skill, effort and responsibility and are performed under similar working conditions.

To prevail on a wage discrimination claim under the FPWA, an employee simply must demonstrate a pay disparity based on sex; proof of the intent to discriminate is not required. The FPWA allows exceptions for wage differentials based on a seniority system, merit system, or a system that measures earnings by quantity or quality of production.

### Retaliation Prohibited

The FPWA prohibits employers from retaliating against an employee for asserting a claim or right under the statute, assisting another person to do so, or for informing another person about employment rights or other rights provided by law.

### Private Right of Action

Aggrieved employees may bring claims for wage discrimination directly in court, without first filing an administrative action. Employees are not required to pay any filing fees or other court costs necessarily incurred in such proceedings. Alternatively, employees may pursue the administrative process available under the New Mexico Human Rights Act (NMSA 1978, sections 28-1-10 through 28-1-13). Employees must file a claim for wage discrimination no later than two years from the last date of employment. However, initiation of the administrative process under the New Mexico Human Rights Act tolls the statute of limitations for filing a lawsuit under the FPWA.

### Remedies

If an employer is found in violation of the FPWA, a court may order injunctive and equitable relief, including employment, reinstatement, promotion, and damages. Damages are based upon the affected employee's unpaid wages, retaliation damages, and potential treble damages. The recovery of unpaid wages is limited to six years prior to the date of the last violation. A court, at its discretion, may refrain from awarding treble damages if the employer shows that the act or omission giving rise to the claim was made in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation of the law. In addition to

damages, a prevailing employee may recover court costs and reasonable attorney's fees from the employer. A court also may order an employer to post in its workplace a notice describing the employer's violations or a copy of a cease and desist order applicable to the employer.

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Employers in New Mexico should consider reviewing their job descriptions and wage payment policies to ensure compliance with the new law. Employers also should consider conducting an audit of their wage payment practices to identify and limit any potential risk of liability.

If you have any questions about the FPWA or other workplace developments, please contact Victor P. Montoya, at (505) 878-0515 or [MontoyaV@jacksonlewis.com](mailto:MontoyaV@jacksonlewis.com), or the Jackson Lewis attorney with whom you regularly work.

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