

District of Columbia Passes Legislation Allowing Employees to Discuss Wages

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The District of Columbia has passed the Wage Transparency Act of 2014. The Act prohibits all private employers within the District from implementing workplace policies that forbid employees from discussing their wages with coworkers. The Act echoes President Barack Obama's Executive Order 13665, mandating that federal contractors allow employees to discuss their wages. After a period of congressional review, D.C.'s Wage Transparency Act took effect on March 11, 2015.

The Act prohibits employers from enforcing workplace policies that "[r]equire, as a condition of employment, that an employee refrain from inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of another employee." It also prohibits employers from retaliating against any employee that has disclosed or is believed to have disclosed wages. Finally, employees are protected from retaliation for lodging a complaint, testifying, or participating in an investigation related to a violation of the Act.

The Wage Transparency Act not only requires that employees be allowed to discuss their *own* wages, it requires that employees be permitted to discuss the wages of *other* employees as well. There is nothing in the law that limits an employee's right to discuss the wages of another employee, even when that information has been obtained improperly and without the permission of the employee whose wage information is being discussed.

The Act provides an exception for certain employees, however, such as human resources professionals, who have "regular access to information regarding the wages of other employees in the course of the employee's work." These employees will not be allowed to disclose wages under the Act and employers may implement policies prohibiting their use of wage information.

Although this Act will not create a new private cause of action, there are civil penalties for employers who violate the Act's provisions: a civil fine of \$1,000 for the first violation; \$5,000 for the second violation; and \$20,000 for each subsequent violation.

The Act would broaden worker protections already provided under Section 7 of the National Labor Relations Act ("NLRA"). Generally, the NLRA authorizes private-sector, non-supervisory employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The NLRA has been interpreted consistently to prohibit workplace policies that bar employees from discussing their wages and working conditions. As a result, the freedom to discuss wages has long been a protected right for employees covered by the NLRA. However, D.C.'s Wage Transparency Act applies to *all* employees, regardless of supervisory status. Whether the new law is preempted in whole or in part by the NLRA will have to await judicial determination.

Please contact your Jackson Lewis attorneys if you have any questions about the Act and to discuss your specific organizational needs and compliance with the law.

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