# 12 DEPARTMENT OF LABOR

170 BUREAU OF LABOR STANDARDS

Chapter 12: RULES RELATING TO EQUAL PAY

I. Definitions.

 As used in this chapter and in interpreting 26 MRSA §628, unless the context clearly requires otherwise, the following terms have the following meanings:

 A. "Aggrieved party" means any individual, group, or organization, including current or former employees, or a labor union, who has been injured, or whose members have been injured, by a practice alleged to violate 26 MRSA §628 and these rules.

 B. "Bureau" means the Department of Labor, Bureau of Labor Standards.

 C. "Director" means the Director of the Bureau of Labor Standards.

 D. "Effort" means the physical or mental exertion required for the performance of a job. Effort encompasses the total requirements of a job. Working conditions must be considered in making a determination of the degree of effort necessary to do a job to the extent reasonable and necessary.

 E. "Employee" means every person who may be permitted, required, or directed by any employer to engage in any employment in consideration of direct or indirect gain or profit.

 F. "Employer" means an individual, partnership, association, corporation, legal representative, political subdivision of the State, trustee, receiver, trustee in bankruptcy, and any express company or common carrier by rail, motor, water, or air doing business or operating within the State.

 G. "Establishment" means an industrial or commercial facility or place of business. An entity operated by the same employer shall be considered a single establishment for purpose of this chapter even though it may operate at different physical locations, where employees at these separate locations are engaged in functionally similar operations and there is a substantial degree of central authority for establishing personnel rules and approving wage rates.

 H. "Job classification" means one or more positions sufficiently similar with respect to duties and responsibilities so that the same descriptive title may be used with clarity to designate each position allocated to the class; the same general qualifications are needed for performance of the duties of the class; the same tests of fitness may be used to recruit employees; and the same schedule of pay can be applied with equity to all positions in the classification under the same or substantially the same employment conditions.

 I. "Merit increase system" means an established, bona fide, uniform, and objective system which rewards an employee with promotion, pay increases, or other advantages on the basis of competence.

 J. "Responsibility" means the degree of accountability and reliability required in the performance of a job, with emphasis on the importance of the job obligation, including but not limited to, coordination of information, organization, and the well being of individuals.

 K. "Seniority system" means a system that gives preference to workers based on years of service. For example, a worker with more years of service may be paid more for performing a particular job than an employee with fewer years of service in that same job.

 L. "Skill" means the performance requirements of the job including, but not limited to, such factors as experience, training, education, ability, human relations, and communication. In reviewing the skill level of a position class, the efficiency of any individual employee's performance in the job is not, in itself, a factor in evaluating skill.

 M. "Wages" means all payments made to or on behalf of an employee as remuneration for employment. The term wages includes all forms of compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called wages, salary, or profit sharing. An expense account, monthly minimum, bonus, uniform cleaning allowance, board or lodging, use of company car, gasoline allowance, vacation and holiday pay and premium pay for work on weekends, holidays or other days, or hours in excess or outside of the employee's regular days or hours of work are also considered remuneration for employment under this chapter.

II. Equal Pay for Jobs with Comparable Requirements.

 A. An employer shall not discriminate between employees within the same establishment on the basis of gender by paying wages to any employee in any occupation at a rate less than the rate paid to an employee of the opposite gender for comparable work on jobs with comparable requirements related to skill, effort, and responsibility.

 B. Nothing in subsection A shall prohibit the payment of different wages to employees where such payment is made pursuant to any of the following:

 1. A seniority system;

 2. A merit increase system; or

 3. A difference in the shift or time of day worked.

 Nonetheless, the preceding systems or circumstances must not be found to discriminate on the basis of gender.

III. Complaint Process

 A. Any aggrieved party who believes that he or she has been discriminated against in violation of 26 MRSA §628 may file a complaint with the Bureau of Labor Standards. The Bureau must provide the aggrieved party with a complaint form on which the aggrieved party shall state in writing the facts upon which the complaint is based and the harm suffered. The aggrieved party stating that the facts presented are true to the best of her or his knowledge must sign this form. The form should be sent to the Bureau's Wage and Hour Division. [Note: the address of the Wage and Hour Division is 45 State House Station, Augusta, ME 04333‑0045.]

 B. If the Bureau determines that the facts provided by the aggrieved party do not state a claim upon which relief can be granted under this chapter, it may dismiss the complaint but must keep confidential the name of the aggrieved party and employer involved. Written notice of any such dismissal must be given to the aggrieved party. The notice must also advise the aggrieved party of his or her right to bring a civil action under 26 MRSA §628, how such action may be brought, the deadlines for filing such action, and any available attorney fees, should the aggrieved party prevail. The Bureau will not pursue an investigation following such dismissal unless new evidence is presented which, on review, supports the merits of the claim. The Bureau will not accept a new case nor reopen a previously reviewed case that is the subject of a civil action.

 C. As soon as practicable, the Bureau must, except in those complaints dismissed under subsection B, provide written notice to the employer against whom allegations have been made that a complaint has been filed, along with such information as is reasonably sufficient for the employer to understand and respond to the complaint. Where an aggrieved party requests confidentiality, the Bureau must make every effort to prevent the identity of the aggrieved party from becoming known to the employer except when doing so might compromise the Bureau's ability to conduct its investigation. In such cases, the Bureau will advise the aggrieved party of its need to reveal his or her identity and, thereafter, allow that party an opportunity to withdraw the complaint before notification is given to the employer.

 D. With respect to all complaints, except those dismissed under subsection B, the Bureau must conduct an investigation and determine if reasonable cause exists to believe that discrimination has occurred in violation of this chapter. The investigation shall include a request that the employer respond to the complaint, a review of the employer's self-evaluation, if any, including a determination of whether the self‑evaluation meets the requirements of this chapter, and any relevant wage and personnel information. The investigation may include the examination of evidence probative of unlawful wage differentials such as a showing of pay differentials between employees with comparable skill, effort, and responsibility; and/or a showing that jobs within the employer's workforce are segregated by gender. As part of the investigation, the Bureau may hold fact‑finding hearings as it deems necessary. Such hearings will be limited in scope to those issues which the Bureau believes to be in question. The Bureau has the right to subpoena the records of the employer and to interview witnesses under oath in the same manner as provided for under the Maine Administrative Procedure Act (5 MRSA §8001 *et seq*.). The hearings may include an opportunity for both sides to present evidence and witnesses. If a party presents witnesses, a cross‑examination will be allowed. Any follow up examination, if allowed, will be solely at the discretion of the hearing officer.

 E. In the course of any investigation pursuant to this chapter, the Bureau will consider as confidential any and all information received, and may not divulge such information except as allowed in 26 MRSA §3. Unless the parties agree otherwise, any negotiated settlement will be confidential.

 F. At the conclusion of its investigation, the Bureau must make one of the following findings:

 1. Reasonable Cause found. If the Bureau determines that there is reasonable cause to believe that discrimination has occurred under this chapter it may:

 a. Seek a voluntary compliance agreement signed by the employer that eliminates the unlawful practice and provides appropriate relief to the aggrieved party; or

 b. Refer the complaint to the Attorney General, informing the Attorney General of the relevant facts and recommending the commencement of a civil enforcement action.

 2. No Reasonable Cause found. If the Bureau determines that there is no reasonable cause to believe that discrimination has occurred under this chapter the complaint will be dismissed.

 Whenever a determination is made under this subsection, a written notice must be provided to the parties stating the action taken, the findings of fact, and the conclusions of law supporting that action. The notice must also advise the aggrieved party of his or her right to bring a civil action under 26 MRSA §628, how such action may be brought, the deadlines for filing such action, and any available attorney fees should the aggrieved party prevail.

 G. Prior to the issuance of a reasonable cause determination made under subsection F, the parties may settle the complaint on mutually agreeable terms. Such an agreement will not affect the processing of a complaint made by any other aggrieved party, the allegations of which are like or related to the individual allegations settled.

 Nothing in this subsection prevents the parties and the Bureau from agreeing to class‑wide relief, provided that the Bureau determines that:

 1. The aggrieved party is an adequate representative of the class; and

 2. The proposed settlement fairly compensates the class as a whole and remedies the discrimination.

 All members of the class must be notified in advance of, and be given an opportunity to comment on, the proposed settlement. Any member may withdraw from the class and continue to pursue relief in a private action.

 H. Any person affected by a determination of the Director may appeal that determination to the Commissioner of Labor by filing a written notice with the Commissioner stating the specific grounds of that person's objection within 15 working days from the issuance of the determination. After the 15 working days the determination is a final agency action.

IV. Presumption of Compliance.

 A. Where an employer, charged under this chapter with unlawful discrimination, has completed a self evaluation which meets the standards set forth in Section V and can also make an affirmative showing that progress is being made towards removing or preventing wage differentials based on gender, in accordance with that evaluation, including implementing any required remediation plan, the Bureau will then presume that the employer has not engaged in gender discrimination in violation of this chapter.

 B. In such cases, the Bureau must give the aggrieved party an opportunity to rebut this presumption through evidence which reasonably demonstrates that, notwithstanding the employer's self‑evaluation, the employer has violated this chapter. In meeting the burden of overcoming this presumption the aggrieved party may provide all relevant information including, but not limited to, evidence that:

 1. The employer's job analysis devalues attributes associated with jobs occupied predominantly by members of one gender and/or over‑values attributes associated with jobs occupied predominantly by members of the other gender;

 2. Notwithstanding non‑discriminatory basic pay rates, periodic raises, bonuses, incentive payments, or other forms of remuneration differ between jobs occupied predominantly by members of one gender; or

 3. The job the aggrieved party occupies was not adequately evaluated.

 4. A job evaluation process has been completed and, if necessary, a remediation process is in progress or has been completed, but the self‑evaluation has not been reviewed and updated at reasonable intervals to adjust for changes in the work environment over time.

 C. An employer wishing to avail themselves of this presumption must produce documentation describing the self‑evaluation process in the detail necessary to show that they have met the standards under Section V, subsection A.

V. Employer Self‑Evaluation.

 A. In order to be eligible for the presumption of compliance in accordance with Section IV, the self‑evaluation must:

 1. Clearly define the establishment in accordance with Section I, subsection G;

 2. Analyze the employee population to identify possible areas of pay discrimination;

 3. Establish a job evaluation plan as a means of determining the value of jobs within the establishment. The plan must:

 a. Be free of any gender bias;

 b. Allow for the comparison of all jobs; and

 c. Fully and accurately measure the skill, effort, and responsibility of each job based on the actual work performance requirements of the jobs evaluated;

 4. Apply the job evaluation plan to all or a significant sample of jobs, focusing on those that are predominately occupied by one gender;

 5. Create a job classification structure where jobs of equal value are placed in the same level or grouping;

 6. Determine the base pay differential between jobs that are predominately occupied by one gender to those predominately occupied by the other gender, in order to identify any wage rate discrimination; and

 7. Remedy any base pay differential identified in subsection 6. In order to meet this standard, such remediation may not reduce the pay of any employee or class of employees.

 B. The presumption of compliance may be strengthened where, throughout the self‑evaluation, including any needed remediation, the employer maintains communication with and keeps employees apprised of the established process. The method and procedure for that communication may vary according to the size and organizational structure of the establishment. However, any method or procedure chosen should be adequate to reach all employees at the establishment.

STATUTORY AUTHORITY: 26 M.R.S.A. §42 and 1997 Resolves c.43

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