

**STATE OF MAINE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
FIRST REGULAR SESSION
SENATE ADVANCED JOURNAL AND CALENDAR**

Friday, June 30, 2017

SUPPLEMENT NO. 6

COMMUNICATIONS

(2-1) The Following Communication:

S.C. 561

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

30 June 2017

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature,

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of Maine, I am hereby vetoing LD 1259, "An Act Regarding Pay Equality."

This bill amends the Maine Human Rights Act to make it "evidence of discrimination" if an employer asks about an applicant's salary history before making an offer of employment that includes all compensation.

My Administration fully supports the premise that all individuals should be paid what the job and the individual's own experience and skills are worth. Maine already has an Equal Pay Act enforced by the Department of Labor, as well as additional protections under the Maine Human Rights Act. Between the two agencies, only a handful of wage discrimination complaints are found to be valid each year.

LD 1259, however, poses a particular challenge. It operates on the presumption that some or all previous wages reflect discrimination, which is not the case. Furthermore, wage history gives employers a better understanding of whether the business can afford a candidate and helps them determine the market value for a comparable position.

As a majority small business state, Maine's employers are often their own HR departments. Adding another law restricting a legitimate business practice places yet another burden on our employers. If an employer cannot ask, they may end up making even lower offers than they normally would, resulting in lower wages. This law could actually produce the effect it is intended to mitigate, while making Maine less attractive to businesses.

Similar regulations, which prohibit what employers can ask and to whom they can ask it, are currently being challenged in other states' and federal courts. This spring, the 9th U.S. Circuit Court of Appeals reversed a district court ruling in *Rizo v. Yovino*, concluding that under the federal Equal Pay Act, "prior salary can be a factor other than sex if it supports a business policy and the employer uses the factor reasonably in light of its stated purposes and practices;" however, the 10th and 11th Circuits have reached the opposite conclusion, so this issue appears to be headed to the U.S. Supreme Court.

Although the federal decision does not affect such state laws as LD 1259, if the Supreme Court were to find that questions an employer may ask about salary or compensation history serve a valid business purpose, Maine would have to review this law. The prudent course is to await a clarifying decision by the Supreme Court. The legislature was advised of the pending federal litigation at the public hearing, but once again chose not to take the prudent path; instead, legislators chose to make Maine more hostile to job creators and to risk litigation at the expense of our taxpayers.

For these reasons I am returning LD 1259 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

S/Paul R. LePage
Governor

(2-2) The accompanying Bill "An Act Regarding Pay Equality"

S.P. 422 L.D. 1259
