

Massachusetts Passes Radical Equal Pay Law

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On August 1, 2016, Massachusetts Governor Charlie Baker signed [An Act to Establish Pay Equity](#), which as the name aptly suggests, seeks to ensure equal pay for comparable work for all Massachusetts workers and equal opportunity to earn competitive salaries. The Act will take effect on January 1, 2018.

The new law prohibits any wage disparity between genders for “comparable work.” The statute defines “comparable work” as “work that is substantially similar in that it requires substantially similar skill, effort and responsibility, and is performed under similar working conditions; provided, however, that a job title or job description alone shall not determine comparability.”

Other key provisions of the law:

- Prohibit disparity in pay for comparable work unless the variation is based upon:
 - Seniority;
 - A bona fide merit system;
 - A bona fide system which measures earnings by quantity or quality of production or sales;
 - Geographic location; or
 - Education, training, or experience to the extent such factors are reasonably related to the particular job in question and consistent with business necessity.
- Allow employees to discuss their own or other employees’ wages and prohibit employers from disallowing such discussions.
- Prohibit employers from screening job applicants based on their wage or salary history, including by requiring that an applicant’s prior wages or salary history satisfy minimum or maximum criteria, or requesting that an applicant disclose prior wages or salary history.
- Prohibit employers from seeking the salary history of a prospective employee from any current or former employer; provided, however, that only after the employer makes an offer of employment including compensation, the employee may provide written authorization.
- Establish a three year statute of limitations to file an action after the date of the alleged violation

- Remove the requirement that aggrieved employees file a charge of discrimination with the MCAD as a prerequisite to bringing an action.
- Create an affirmative defense for any employer who, within the previous three years, completes a self-evaluation of its pay practices, in good faith, and can demonstrate reasonable progress has been made to eliminate gender passed pay differentials for comparable work.

What should you do to prepare for January 1, 2018?

First, communicate to all employees involved in the hiring process that job applicants may not be asked about their prior wages or salary. Second, review all form job applications and remove all questions concerning salary requirements. And finally, review your employee handbooks and revise all policies or procedures prohibiting employees from discussing wages.

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