

## THE EQUAL PAY LAW: EMPLOYER RESPONSIBILITIES

Effective on July 1, 2018

### Compensation History

The law includes prohibitions on what employers may ask prospective employees about their wage history. Employers may not require prospective employees to disclose during the interview process their prior wages or salary history, nor may they require that the applicants meet a minimum or maximum salary to be eligible for a job. Further, employers are prohibited from seeking applicants' salary history from their current or former employers. However, if a prospective employee voluntarily discloses compensation information, or after a formal job offer that includes compensation is negotiated and made, a prospective employer may verify salary history.

### Salary/Wage Information

The law makes it unlawful for employers to prohibit employees from discussing or disclosing information about their own wages and benefits, or the wages of other employees. Employers are not obligated to disclose an employee's wages to another employee or to a third party.

### Comparable Work

The new law clarifies and broadens "comparable work." It prohibits employers from relying solely on a job title or job description to determine whether work is comparable and defines "comparable work" to mean "work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions." The new law recognizes six justifications for wage disparities and variations in pay are permissible if based upon:

- Bona fide seniority system, provided that that job-protected leave does not reduce seniority;
- A bona fide merit system;
- A bona fide system measuring quality or quantity of production or sales;
- Geographic location of where the job is performed;
- Education, training, or experience to the extent these factors reasonably relate it the job at issue and the business necessity; or
- Travel, if travel is a regular and necessary condition of the job.

### Affirmative Defense

The law establishes an affirmative defense for employers who have audited their pay practices within the prior three years and prior to the commencement of a claim of a violation. Specifically, employers who engage in a good-faith self-evaluation of their pay practices and "demonstrate that reasonable progress has been made towards eliminating wage differentials based on gender for comparable work," have an affirmative defense to pay discrimination claims. If a self-evaluation is completed but the employer cannot demonstrate that the evaluation was reasonable in detail and scope, the employer will not be entitled to the affirmative defense, but the employer will not be liable for liquidated damages. The law also prohibits courts from drawing an adverse inference against employers who have not done a voluntary audit.

### Equalizing Pay Cuts

An employer cannot reduce an employee's compensation solely to comply with the law.

## Enforcement

Under the new law, the statute of limitations has been extended from one year to three years. The maximum fine for a violation is \$100. The new law also allows employees to go directly to court with their pay discrimination claims without first bringing a complaint to the Massachusetts Commission against Discrimination or the Attorney General's Office.

## Attorney General: Guidance

There may be regulatory guidance from the Massachusetts Attorney General, who is empowered to issue regulations under the law.

## Sources

The following sources were used in development of the explanations provided above:

- <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter177>
- [www.masslaborandemploymentlaw.com/2016/08/03/massachusetts-enacts-new-pay-equity-law](http://www.masslaborandemploymentlaw.com/2016/08/03/massachusetts-enacts-new-pay-equity-law)
- [www.blr.com/HR-Employment/Discrimination/Equal-PayComparable-Worth-in-Massachusetts#](http://www.blr.com/HR-Employment/Discrimination/Equal-PayComparable-Worth-in-Massachusetts#)
- <http://dbslawfirm.com/news/massachusetts-enacts-equal-pay-act-what-employers-can-do-now-to-prepare-for-its-implementation>
- <https://resources.workable.com/blog/massachusetts-equal-pay>
- [www.laboremploymentperspectives.com/2016/08/08/how-massachusetts-new-equal-pay-law-impacts-employers](http://www.laboremploymentperspectives.com/2016/08/08/how-massachusetts-new-equal-pay-law-impacts-employers)
- [www.bostonlawyerblog.com/2016/08/05/getting-jump-start-competition-implementing-equal-pay-act](http://www.bostonlawyerblog.com/2016/08/05/getting-jump-start-competition-implementing-equal-pay-act)
- [www.massemploymentbizlit.com/2016/08/massachusetts-passed-unprecedented-pay-equity-legislation-what-employers-should-know](http://www.massemploymentbizlit.com/2016/08/massachusetts-passed-unprecedented-pay-equity-legislation-what-employers-should-know)
- [www.morganlewis.com/pubs/massachusetts-legislature-passes-sweeping-equal-pay-amendments](http://www.morganlewis.com/pubs/massachusetts-legislature-passes-sweeping-equal-pay-amendments)