

e-Alert: Massachusetts Pay Equity Law goes into effect July 1, 2018

Overview

In an effort to close the [wage gap](#) between male and female employees, a number of states and major cities have recently adopted wage equity and salary history laws. According to the Bureau of Labor Statistics, in 2016, the average female employee earned 80 cents for every dollar a man received during the same period.

Massachusetts Pay Equity Law goes into effect July 1, 2018. The state will impose significant responsibility on all Massachusetts employers to ensure equal pay for different genders for comparable work. The law broadens the definition of equal work, extends the statute of limitations, strengthens the penalties, and demands greater transparency in pay practices.

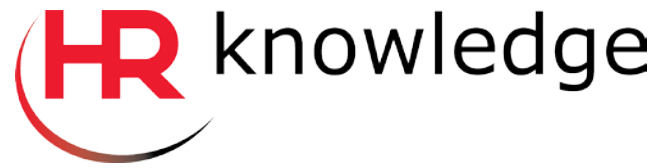
While the law imposes substantial new obligations on employers, it also allows them to take proactive steps and conduct a self-evaluation to protect them from equal pay claims in the future by potentially serving as a “safe-harbor” defense.

The new law defines comparable work

Historically, the Massachusetts equal pay statute has not defined "comparable work." Over the years, and in the absence of any clear definition, courts have interpreted "comparable work" to mean that: (1) two positions have the same (or very similar) substantive job duties; and (2) the two positions require comparable skill, effort, responsibility, and working conditions. On July 1, 2018, the meaning of "comparable work" will be expressly defined in the statute. Employers will still be prohibited from paying employees of different sexes unequally for comparable work. However, job titles and duties will no longer be a determinative factor. Instead, the comparable work analysis will focus much more broadly on similarity of skill, effort, and responsibility, and working conditions required for positions, even where the job titles and duties of those positions are different. This new, “gray” standard will make it difficult for employers to determine which jobs to “compare” without conducting a deep dive pay-equity analysis.

What employers need to know

1. There will be a new definition of “comparable work”: Job titles and descriptions alone do not suffice when making salary comparisons. Employers need to evaluate skills, effort required, level of responsibility, and working conditions as well.
2. Comparable wages should include all forms of compensation, not just salary. Bonuses, benefits, commissions, and housing allowances are all pertinent, along with any other fringe benefits.
3. The allowable exceptions for pay differences will be a defined seniority or merit pay system; a pay system that measures quantity or quality of production, sales, or revenue; geographic location; education, training, or experience (if applicable to the particular job); and travel requirements.
4. Asking for salary history from job candidates is explicitly prohibited. The law also prohibits asking about other forms of past compensation, such as commissions or benefits.
5. Employees will have three years to sue an employer after a violation, and each paycheck constitutes a violation. Employers are liable for up to double the employee’s wages plus attorney fees.



Next steps for employers

1. Employers should conduct a self-evaluation now, especially if they will be making salary changes or determinations in the next six months (such as Charter schools, which typically set faculty and staff salaries for the following school year by March). The self-evaluation needs to be conducted in good faith and be reasonable in detail and scope.
2. The new law allows employers to use a “safe harbor” defense against claims if a self-assessment was completed within the three years prior to the legal action. It is *imperative* for employers to conduct an assessment of their current compensation practices and make reasonable progress toward equal pay, in order to protect themselves from claims under the new law. While employers can conduct their own self-evaluation many employers don’t have the time, resources or expertise to do so in-house. HR Knowledge can assist you in conducting a pay-practice assessment; please [contact us](#) for more information.
3. Employers should review their employment applications and pre-employment inquiries to ensure they no longer require or ask about salary history.

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