

**Dear HR Knowledge, With all the new pay equity laws being passed, how should we rethink our annual increases this year?**

Good question, and one that should be on the minds of all employers as equal pay legislation — extensions of the Equal Pay Act of 1963 — moves forward state by state.

Two states set a new standard in pay equity in July 2018. The Massachusetts Act to Establish Pay Equity (AEPE) took effect in July 2018, making it illegal to compensate employees at a rate lower than the rate paid to employees of a different gender for comparable work. It is important to note that “comparable work” is not limited to employees with the same job title. The AEPE contains salary history and wage transparency provisions. In addition, the law is notable for including an affirmative defense to employers who engage in good faith self-evaluation of their own pay practices and can demonstrate reasonable progress toward eliminating gender-based pay disparities.

New Jersey set the standard in terms of pay equity a few months back with a new statute that covers all classes of employees protected under the state’s antidiscrimination law. Effective since July 2018, the new law makes it illegal for an employer to pay employees of a protected class under the New Jersey Law Against Discrimination a lower rate of compensation than employees who are not members of the protected class for substantially similar work.

Protected employee categories in New Jersey include race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability, atypical hereditary cellular or blood trait of an individual, and liability for service in the armed forces.

The New Jersey law allows different rates of compensation only if an employer demonstrates that the difference is based on training, education, experience, or quantity or quality of production. To further tighten parameters, these “difference factors” cannot be based on sex or any other protected class; each factor must be applied reasonably, one or more factors are applicable, and the factors must be job-related and based on business necessity. The nuances to the New Jersey statute are many, requiring employers to thoroughly examine the legislation before and during the compensation evaluation process.

Another state with new pay equity legislation is Washington State, whose Equal Pay Opportunity Act (EPOA) became law in June 2018. This act applies to all employers and bans unequal pay between “similarly employed” workers on the basis of gender. Individuals are considered “similarly employed” in Washington if they work for the same employer; their job performance requires similar skill, effort, and responsibility; and their jobs are performed under similar working conditions.

The bottom line is that as an employer you must thoroughly acquaint yourself with the pay equity laws in the states where you do business. State statutes vary widely, so arm yourself and your HR department against violations with careful research and don’t forget to bone up on salary history bans. Currently, eleven state-wide bans, including Massachusetts, New York, Delaware and Vermont, have adopted salary history legislation that looks at whether current pay is based on past employer assessments that might have been discriminatory.

If knowledge is silver, then compliance is gold. Make no mistake; violating equal pay laws can result in a lawsuit. To become, and remain, compliant with equal opportunity laws, you must be able to justify differential pay between employees. And word to the wise — keep records for a minimum of three years detailing employee wages, job descriptions, and reasons for compensation.

### About HR Knowledge

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