



On August 1, 2016, Governor Charles Baker signed into law amendments to the Massachusetts Equal Pay Act, Mass. Gen. L. c. 149 § 105, (the “Act”) setting a national precedent for gender equity in compensation. Effective January 1, 2018, the amendments seek to provide more comprehensive protection from discrimination by utilizing a “comparable work” standard and preventing employers from using a hiring candidate’s salary history to determine their compensation.

The Attorney General is authorized to issue regulations interpreting the amendments.

### **Important Changes:**

#### **Expanded Definition of Comparable Work:**

While the Act previously prohibited different compensation on the basis of gender for work under the same job title or description, the new legislation requires pay equality for work that is comparable regardless of job title and description. The Act now defines “comparable work” as work that is

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substantially similar in skill, effort, responsibility and working conditions. The Act does, however, allow for differing compensation based on: (a) a bona fide seniority system – so long as seniority is not related to protected family or medical leave; (b) a bona fide merit based system that bases earning on the quantity or quality of production or sales; (c) geographic location; (d) education, experience, or training if those factors are reasonably related to the job; and (e) travel, if travel is a necessary and regular part of the job.

#### **Salary History Can No Longer Factor Into Hiring:**

Employers no longer will be allowed to screen job applications on the basis of salary history, nor will they be able to inquire about the salary history of a prospective employee. Although applicable regardless of gender, these provisions are intended to ensure that the historically lower starting salaries of women and minorities upon entering the workforce do not continue to carry forward throughout their careers. By forbidding inquiry into an applicant’s salary history, the law aims to end a mechanism that can perpetuate disparities when employers base new salaries on previous ones.

In addition, employers will no longer be able to require, as a condition of employment, that an

employee refrain from inquiring about their own compensation or that of others. By allowing discussion of salaries, the Act seeks to create a greater degree of transparency surrounding compensation. Notwithstanding the foregoing, an employer may prohibit its employees whose job responsibilities require access to other employees’ compensation information (e.g., human resources employees) from disclosing such information without prior written consent from the employee whose information is sought or requested.

#### **Potential Liability and Damages:**

Under the Act, employees, groups of similarly situated employees, or the Attorney General may bring an action to collect unpaid wages and other compensation. Employees are not required to first pursue a discrimination claim with the Massachusetts Commission Against Discrimination. Violations of the Act are subject to a mandatory award of double unpaid wages, including benefits, plus attorney’s fees. There is a three year statute of limitations from the date of the alleged violation. A violation occurs when a discriminatory compensation decision or other practice is adopted, when an

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employee first becomes subject to discrimination, or when an employee is affected by the application of a discriminatory practice, including each time discriminatory wages, benefits or other compensation are paid.

### **Safe Harbor Provision for Self-Evaluations:**

If an employer does a self-evaluation within the previous three years to determine whether there are compensation variations based on gender differences for comparable work and demonstrates that "reasonable progress" towards eliminating them has been made, then the employer will have an affirmative defense to liability. An employer who is paying different compensation in violation of the Act shall not reduce the pay of any employee in order to comply. The law anticipates that the Attorney General will issue standard templates or forms for employer self-evaluations.

### **Tips for Employers:**

In order to ensure your business is in compliance with the Act, you should in advance of the January 1, 2018 effective date:

- Review your hiring

policies so that prohibitions on requiring disclosure of salary history (including, for example, in job application forms) are in place.

- Revise policies, if necessary, to remove prohibitions on employees discussing or disclosing salary information (except for prohibitions on employees whose job responsibilities require access to other employees' compensation information).
- Document variation in compensation based on: seniority; merit; quantity/quality of production or sales; geographic location where job is performed; education, training or experience to extent such factors are reasonably related to particular job in question and consistent with business necessity; and travel, if travel is a regular and necessary condition of the job.
- Conduct a self evaluation of your payment practices (at least every three years) to identify and address unfair compensation differences and document in writing all steps taken towards eliminating compensation differences based on gender for

comparable work.

- Post the required notice of rights under law in a visible place where employees congregate. The Attorney General is expected to issue of form notice of rights under the law.

For the full text of the law please visit: [https:// malegislature.gov/bill/189/senate/s2119](https://malegislature.gov/bill/189/senate/s2119)

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