

# **CLIENT ALERT:**

## **Massachusetts Pay Transparency Bill Signed into Law**

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On July 31, 2024, Governor Maura Healey signed into law *An Act Relative to Salary Range Transparency* (the “Act”), imposing two sets of obligations on employers with certain thresholds of Massachusetts employees.

First, starting July 31, 2025, a public or private employer of at least 25 employees in Massachusetts must disclose the pay range for a job posting on any advertisement or job posting intended to recruit job applicants for a specific employment position.

Second, by February 1, 2025, a public or private employer of at least 100 employees in Massachusetts who is required to submit EEO-1, EEO-3, EEO-4 or EEO-5 reports (“Wage Data Reports”) to the U.S. Department of Labor will also be required to submit its Wage Data Reports to the Secretary of the Commonwealth covering the previous year.

The Attorney General is directed to conduct a public awareness campaign concerning employer obligations under the Act within six months after its effective date.

### **Pay Range Disclosures**

**Obligations and Deadlines:** Beginning on July 31, 2025, public and private employers of at least 25 employees in Massachusetts must disclose the pay range for a “particular and specific employment position” in the position’s posting.

Also, beginning on July 31, 2025, employers of at least 25 employees in Massachusetts must disclose the pay range for a particular and specific position to employees who are offered a promotion, or transfer, to a new position with different job responsibilities, or to any employee holding such position, or to an applicant for such position, who requests it.

**Pay Range:** The statute defines pay range as the annual salary range or hourly wage that a covered employer reasonably in good faith expects to pay for the specific employment position.

**Posting:** Postings include any advertisement or job posting intended to recruit job applicants for a particular employment position, including both direct recruitment by an employer and indirect recruitment through third parties.

**Anti-Retaliation:** After July 31, 2025, it will be unlawful for employers of at least 25 employees in Massachusetts to discharge, retaliate or discriminate against any employee or applicant because the employee or applicant has: (i) taken action to enforce their rights under the pay range disclosure law; (ii) made any complaint to their employer, an agent of their employer or the Attorney General regarding an alleged violation of the law; (iii) instituted, or caused to be instituted, any proceeding under the law; or (iv) testified or is about to testify in any instituted proceeding under the law.

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### **Wage Data Reports**

**Obligations and Deadlines:** Public and private employers of at least 100 employees in Massachusetts are required to submit Wage Data Reports to the Secretary of the Commonwealth.

By February 1, 2025, and annually thereafter, employers of at least 100 employees in Massachusetts who submit EEO-1 reports to the DOL will have to submit a copy of their EEO-1 data report to the Secretary of the Commonwealth covering the previous year.

By February 1, 2025, and each odd numbered year thereafter, employers of at least 100 employees in Massachusetts who submit EEO-3 or EEO-5 reports to the DOL will have to submit a copy of their EEO-3 or EEO-5 report to the Secretary of the Commonwealth covering the previous year.

By February 1, 2026, and each even numbered year thereafter, employers of at least 100 employees in Massachusetts who submit EEO-4 reports to the DOL will have to submit a copy of their EEO-4 report to the Secretary of the Commonwealth covering the previous year.

**Privacy:** Submitted Wage Data Reports are not considered “public records” under the Massachusetts public records law (Mass. Gen. Laws ch. 66 or 66A).

### **Enforcement and Penalties**

Neither the pay range disclosure nor wage

data report obligations provide a private right of action. The Attorney General has exclusive jurisdiction to enforce them.

Employers of at least 25 employees in Massachusetts who post a noncompliant job posting will be subject to penalties after July 31, 2025. Employers of at least 100 employees in Massachusetts who fail to submit their applicable Wage Data Reports by February 1<sup>st</sup> for each year required by the law will be subject to penalties.

In addition to injunctive or declaratory relief, the fines levied against employers for violations of the pay range disclosure or wage data report obligations are the same. The Attorney General will issue a warning for the first offense, a fine of not more than \$500 for the second offense and a fine of not more than \$1,000 for the third offense. Fourth or subsequent offenses are subject to fines of \$7,500 to \$25,000 per violation, depending on the circumstances.

A pay range disclosure offense is defined as one or more job postings for positions made by the same employer during a 48-hour period. Therefore, each posting made within a 48-hour period will not be considered as a separate offense.

**Grace Period:** For two years after a covered employer’s obligations commence, employers will have two business days after notice of a violation to cure any defect before a fine is imposed.

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### RECOMMENDED ACTIONS

Employers should consider the following to prepare for compliance with the Act:

- Create procedures to submit Wage Data Reports to the Secretary of the Commonwealth concurrently with their submission to the DOL.
- Create pay scales that are tied to legitimate reasons for pay differentials, such as an individual's experience, education, credentials and seniority.
- Identify and address unintended discrepancies in compensation to existing employees in positions subject to new hiring.
- Train employees about their obligations to provide pay range data in any postings they create on social media and ensure recruiters are aware of their obligations to provide pay range data in any postings.
- Review the Attorney General's notifications issued on its website as its public awareness campaign concerning the Act.

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