

## **The Massachusetts Equal Pay Act: What It Means For Employers**

On August 1, 2016, Governor Charlie Baker signed a law updating Massachusetts' equal pay law. Among other things, the law addresses gender inequality in pay, perhaps acknowledging the statistic that in the Commonwealth, on average, women are paid 82 cents for every dollar a man is paid. The law becomes effective July 1, 2018.

The new law, in part, prohibits employers from discriminating in the payment of wages, benefits or other compensation on the basis of gender or from paying any person a salary or wage less than a person of a different gender for comparable work. Comparable work is defined as “work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions; provided, however, that a job title or job description alone shall not determine comparability.”

The law does provide some carve-outs where an employer will not be held liable. Employers are not prohibited from paying employees less than another employee of a different gender if (1) there is a bona fide system that rewards seniority, provided that maternity or family leave does not subtract from seniority; (2) there is a bona fide merit system; (3) there is a bona fide system that measures quality or quantity of production or sales; (4) there is a difference in geographic location of where the job is performed; (5) there is a difference in relevant education, training or experience; or (6) there is a difference in the amount the employees travel for the job.

Employers who violate the new law will be liable to the employee for the amount of the unpaid wages, benefits, and compensation, plus liquidated damages, attorneys' fees and costs. Interestingly, employers are not allowed to lower the pay of an employee to match that of another employee of a different gender who performs comparable work. The law is meant to lift all boats.

However, an employer has an affirmative defense if it can show that, within three years prior to the filing of an action, it has completed a reasonable good faith self-evaluation of its pay practices and has taken steps to eliminate unfair pay disparities based on gender. The self-evaluation can take whatever form the employer wants so long as it is reasonable in detail and scope.

The law also prohibits employers from asking applicants about their salary history, or seeking that information from an applicant's current or former employer.

In short, it behooves employers to review their pay practices and employment applications, among other things, sooner rather than later and to take steps to comply with the new law because doing so after a complaint is filed will be too late.

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