Pay Transparency Comes to Massachusetts

BY DANIELLE JUREMA LEDERMAN • JULY 31, 2024

On July 31, 2024, Governor Healey signed into law "An Act Relative to Salary Range Transparency." The law requires covered employers to disclose pay range information to current and prospective employees under certain circumstances. It also requires covered employers to report wage data to the state. Key takeaways from the legislation and planning tips for employers are summarized below:

PAY RANGE DISCLOSURE

Covered employers (i.e., employers with 25 or more employees in Massachusetts) are required to:

- Include a pay range in all job postings;
- Provide the pay range when a current employee is offered a promotion or transfer to a new position with different job responsibilities; and
- Provide the pay range for a particular position to an employee that currently holds the position, or to an applicant for the position, upon request.

"Pay range" is defined as "the annual salary range or hourly wage range that the covered employer reasonably and in good faith expects to pay for such a position at that time."

"Posting" is defined as "any advertisement or job posting intended to recruit job applicants for a particular and specific employment position, including, but not limited to, recruitment done directly by a covered employer or indirectly through a third party."

There is also an anti-retaliation and anti-discrimination provision which prohibits employers from taking adverse action against an employee or applicant who:

- Takes action to enforce their rights under this law;

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- Makes a complaint to their employer, the employer's agent or the attorney general regarding an alleged violation of this law;
- Institutes a proceeding under this law; or
- Testifies or is about to testify in any such proceeding.

REPORTING REQUIREMENTS

Covered employers (i.e., employers with 100 or more employees in Massachusetts at any time during the prior calendar year that are subject to federal wage data report filing requirements) must file a wage data report with the State Secretary, which includes workforce demographic and pay data, categorized by race, ethnicity, sex and job category. Fortunately for employers, submission of a federal EEO Employer Information Report, will meet these state reporting requirements.

Private employers are required to submit wage data reports annually, whereas unions, state and local government, and school systems, will need to submit reports every two years.

The individual reports will not be considered a public record, but the aggregate data will be published by the Executive Office of Labor and Workforce Development.

VIOLATION OF THE LAW

The Massachusetts Attorney General has exclusive jurisdiction to enforce the law. Fortunately for employers, there is no private right of action for employees or applicants.

Any covered employer who violates the law will be issued a warning for the first violation. After a first offense, the punishment escalates with a fine of up to $500 for the second offense, a fine of up to $1,000 for the third offense, and fines between $7,500-$25,000 for fourth or subsequent offenses. A single offense of the pay disclosure provision encompasses all job postings made by an employer in a 48-hour period.

EFFECTIVE DATES

Employers will be required to disclose pay range information beginning **July 31, 2025.**

Covered employers must submit their EEO-1, EEO-3, or EEO-5 reports to the State Secretary by **February 1, 2025**.

Additionally, the law requires the Attorney General to conduct a public awareness campaign, including publishing information on their website, to educate employers regarding the requirements of the new law.

CLIENT TIPS

Covered employers should begin preparations to ensure compliance with the pay transparency (effective July 31, 2025) and reporting (effective February 1, 2025) requirements of the new law. To prepare, employers should consider the following:

- Review your job postings to prepare for compliance with the pay transparency law and update your hiring and recruiting practices accordingly.
- To the extent needed, conduct any market research which may help inform your proposed pay ranges for each position.
- Ensure your HR and management teams are trained and prepared to deal with these new posting and reporting

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requirements.

- Audit your pay practices for current employees to determine if any adjustments need to be made to current pay rates (this may be true in particular for long-term employees who may have been hired when different rates were in place). This can help minimize internal issues where job postings reflect higher ranges or rates than those paid to current employees.

If you have any questions about this alert or any other employment-related matter, please contact your Bowditch employment attorney.

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