

Massachusetts Employers, Act Now to Prepare for the New Pay Equity Law

Q What is the new Massachusetts pay equity law and when does it take effect?

David C. Henderson: The new Pay Equity Act is a significant amendment to existing Massachusetts law. It provides generally that “no employer shall discriminate in any way based on gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work.” And although the governor signed this legislation into law last August, it will not take effect until July 2018.

Q What are the implications for the state’s employers?

DCH: The two key concepts are “gender nondiscrimination in compensation” and “equal pay for comparable work.” Neither is new, particularly in Massachusetts. But there are good reasons nevertheless for focusing on them again now, as if they are new. There are some changes in the underlying law, and the related employee rights will be enforceable by the employee or the Attorney General. Moreover, sanctions for violation can be significant.



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Q Why should employers pay attention now if the law is not in effect yet?

DCH: A major reason is that there are preparations that employers can take now, before the new law takes effect in 2018, that will either ensure compliance or, at the very least, place their pay practices in the most defensible of positions in the event an adverse claim is made. An employer will have an affirmative defense to a claim of gender pay discrimination or failure to provide “equal pay for comparable work” if the employer can show that it satisfied certain prerequisites prior to the commencement of the employee’s action and within the previous three years.

Q So what steps, specifically, should an employer undertake now?

DCH: Employers should undertake pre-claim self-evaluation and remediation measures now, before the Act takes effect. And if a self-evaluation uncovers discrepancies, the employer should take all actions necessary to remedy them. Even if the discrepancies cannot be remedied completely or as quickly as might be desired, the employer will be able to qualify for an affirmative defense against Pay Equity Act claims, if it can show that “reasonable progress has been made towards eliminating wage differentials based on gender for comparable work, if any, in accordance with [its] evaluation.” And an additional benefit will be that any employer qualifying for that affirmative defense will be able to apply it, as well, to claims of gender discrimination under the Massachusetts Fair Employment Practices Act.

Q Are there other notable changes being made by the Pay Equity Act?

DCH: Yes. Rules relating to communications among and with employees will be affected significantly. On one hand, there will be a guarantee of greater “wage transparency” for employees, because companies will be prohibited from telling them that they cannot openly discuss salaries with each other. But on the other hand, employers conducting job interviews will be prohibited from asking candidates about their prior salaries.

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