

The Massachusetts Pay Equity Act – What Employers Need to Know

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Effective July 1, 2018, the Act to Establish Pay Equity (“Pay Equity Act”) imposes new obligations on employers to ensure gender pay parity. The Pay Equity Act significantly overrides the Massachusetts Equal Pay Act (“MEPA”) by creating a more expansive view of comparable work and by attempting to end existing pay disparities. In doing so, the Pay Equity Act: (1) expands the so-called “equal pay for equal work” requirement to equal pay for “comparable work”; (2) prohibits salary secrecy; and (3) eliminates the use of compensation history as a basis or explanation for pay disparity.

What do employers need to know now?

- **Who Does this Apply to?** The Pay Equity Act applies to all Massachusetts employers and any employees with a primary work place in Massachusetts. “Employee” is defined broadly, with very limited exceptions, and includes full-time, part-time, seasonal, per-diem, and temporary employees.
- **Comparable Work**: The Pay Equity Act requires employers to pay men and women equally for “comparable work,” which is defined as work requiring substantially similar skill, effort, and responsibility that is performed under substantially similar working conditions.
- **Wage Variations Permissible Under Limited Circumstances** : Wage variations may be allowed ONLY when based upon a seniority system (except that time spent on pregnancy-related or protected family/medical leave shall not be used to reduce seniority); merit system; a system measuring earnings by quality or quantity of sales; geographic location; relevant education, training, or experience; and/or for regular and necessary travel.
- **No Salary Secrecy Allowed**: Employers are not allowed to ban employees from discussing their compensation.
- **No Salary History Inquiries**: Employers are not allowed on their own or through an agent (i.e., recruiters or job placement services) to inquire about an applicant’s prior salary history, except to (1) confirm wage or salary history that was *voluntarily* provided by the applicant; or (2) after an offer of employment has been made. Furthermore, an employee’s past salary history is not a defense to liability under any circumstance.
- **Intent NOT Required**: Intent to discriminate based on gender is NOT required to establish liability under the law.
- **Procedural Issues**: Employees or prospective employees must file their claim within three years of the alleged violation. There is no administrative exhaustion requirement—Employees can file with the Attorney General’s Office or in court.
- **Damages**: If an employee or prospective employee is successful in proving a violation of the Pay Equity Act, he or she will be entitled to double the amount of the affected employee’s unpaid wages, plus reasonable attorneys’ fees and costs.

How can employers protect themselves from liability?

- **Good Faith Self-Evaluation:** The Pay Equity Act provides an affirmative defense from liability for employers who have completed a good faith self-evaluation of their pay practices and can demonstrate that they have made reasonable progress to eliminate gender-based compensation differentials. The evaluation should be in writing and must be reasonable in detail and scope.
- **Self Remediation:** If an employer seeks protection by conducting a good faith self-evaluation, it must take remedial action within six months, or it risks having the self-evaluation used as evidence against it if an employee or prospective employee files a claim.

What should employers do now?

- Post a conspicuous notice where employees congregate and will see it to educate employees on their rights under the Pay Equity Act.
- The Office of the Attorney General's guidance on the Pay Equity Act, which includes A Basic Guide for Employers to Conduct Self-Evaluations and a Checklist for Employers to Review Their Policies and Practices, can be found [here](#).
- Eliminate wage or salary disclosure requests from employment applications.
- Remove any ban on employee discussions of compensation, salary, or benefits.
- Begin a self-evaluation of pay practices with the assistance of counsel.

The attorneys in Peabody & Arnold's Employment Law and Litigation Practice group are ready to assist your organization as you prepare for these changes. Please contact us for additional information about the new law, how it may impact your organization, and what steps you can take to protect your organization moving forward.