

New Pay Equity Act Signed Into Law in Massachusetts

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Labor and Employment Alert

8.3.16

On August 1, 2016, Massachusetts Governor Charlie Baker signed into law a new Pay Equity Act which implements substantial new worker protections. The new Act, which replaces the previous Pay Equity Act, M.G.L. c. 149, § 105A, still prohibits employers from discriminating in the payment of wages and compensation, but also institutes several new prohibitions on employers in hiring and employment practices. The new Pay Equity Act formally takes effect on July 1, 2018, but may require prompt action by employers in order to avoid potential liability under some of the new provisions of the law.

For example, the new Act prohibits employers from reducing an employee's seniority due to time spent on leave due to a pregnancy-related condition, or time spent on protected parental, family and medical leave. The Act also prohibits employers who find themselves in violation of the Act from reducing the pay of any employee in order to obtain compliance. Significantly, the Act also bars employers from prohibiting employees from discussing wage or compensation information with each other, and from requesting or requiring that a job applicant disclose prior wages or salary history. Similarly, employers are prohibited from seeking the salary history of any prospective employee from a current or former employer of that prospective employee.

The new Act also implements a significant change in terminology from the previous act. The new Act prohibits discrimination in pay on the basis of "gender" instead of "as between the sexes," which appears to extend the scope of the protections afforded under the new Act to transgendered individuals.

Employers should also be aware that the law prohibits discrimination in pay for "comparable work," which is defined by the statute 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." This definition has the potential to generate significant litigation concerning whether a job held by a male employee is "comparable" – even if not the same – to a job held by a female employee, for purposes of determining pay discrimination.

Finally, the law creates a safe harbor defense for employers who have been accused of pay discrimination. Employers may avoid liability for pay discrimination under the Act if they can show that within the last three years and before the commencement of the action, they have completed a good-faith self-evaluation of their pay practices and can demonstrate that reasonable progress has been made towards eliminating compensation differentials based on gender for comparable work in accordance with the evaluation.

The law provides prevailing employees with attorneys' fees, costs, and liquidated damages, in addition to lost wages, benefits or other compensation. In addition, the employee is not required to file a charge with the Massachusetts Commission Against Discrimination as a prerequisite to filing suit in court.

Employers who may be affected by this law should promptly consult with counsel in order to design and implement a pay practice self-evaluation. The employment attorneys at White and Williams are available to assist employers with this important exercise.

Please contact Victoria Fuller (fullerv@whiteandwilliams.com; 617.748.5211) or another member of our Labor and Employment Group for additional information.

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