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CLIENT ALERT

Massachusetts Passes New Pay Equity Law

AUGUST 23, 2016

On August 1, 2016, Massachusetts Governor Charlie Baker signed into law "An Act to Establish Pay Equity." The Massachusetts law follows the recent trend of states enacting more robust pay transparency and pay equity laws with the intention of reducing the pay gap between men and women. The Massachusetts Pay Equity Law will take effect on July 1, 2018.

Equal Pay for Comparable Work

Massachusetts' Pay Equity Law prohibits employers from discriminating on the basis of gender in the payment of wages, including all forms of compensation, for comparable work. While existing federal and Massachusetts laws already forbid such discrimination, the laws do not provide a comprehensive explanation as to what constitutes "comparable" work. The Massachusetts' Pay Equity Law attempts to address that vagueness by defining "comparable work" as "work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions."

Under the new Pay Equity Law, employers may only vary the compensation of employees who perform comparable work where the variation is based on:

- A system that rewards seniority (provided that time spent on leave related to pregnancy or parental, family, or medical leave does not reduce seniority);
- A merit system;
- A system that measures earnings based on quantity or quality of production, sales, or revenue;
- The geographic location where the employee performs the work;
- The employee's education, training, or experience (to the extent that these factors relate reasonably to the job in question); or
- Travel that is a regular and necessary condition of the job.

The Pay Equity Law specifies that whether work is “comparable” cannot be determined based on “a job title or job description alone.” Further, the law instructs employers that they may not reduce any employee’s compensation to comply with the equal pay mandate.

Pay Transparency and Inquiries into Past Compensation

Massachusetts’ Pay Equity Law prohibits employers from deterring employees from inquiring about, discussing, or disclosing their own or another employee’s current compensation. Employers may nonetheless restrict supervisors, human resources employees, and other employees whose responsibilities require access to employee compensation information, from discussing or disclosing other employees’ wages.

Further, the law forbids employers from inquiring into prospective employees’ past or current compensation, except to confirm the information where: (a) the prospective employee has volunteered it, or (b) where the employer has already made an offer of employment that includes compensation. Likewise, an employer may not require that a prospective employee’s prior compensation history meet certain criteria.

The law prohibits retaliation against employees who disclose or discuss their own or another employee’s compensation or who engage in other protected activity.

Penalties and Affirmative Defenses

Employers that violate the Massachusetts’ Pay Equity Law will be liable for any unpaid compensation, an equal amount of liquidated damages, and costs and attorney’s fees. Employees and prospective employees may bring actions on their own behalf, or on the behalf of others who are similarly situated, within three years of an alleged violation. The Massachusetts Attorney General may also bring an action on behalf of any employee or group of employees. Moreover, the law permits plaintiffs to bypass the Massachusetts Commission Against Discrimination to file complaints in court.

Massachusetts’ Pay Equity Law provides an affirmative defense in actions alleging gender-based pay discrimination where an employer has both: (a) completed a good-faith self-evaluation of its pay practices within the three years prior to the commencement of the action, and (b) made progress towards eliminating gender-based wage differentials for comparable work. The employer may design its own self-evaluation, but the evaluation must be reasonable in detail and scope.

Recommendations

Employers should begin reviewing their compensation policies and application materials to ensure their compliance with Massachusetts’ Pay Equity Law well in advance of the July 1, 2018 effective date. Further, recruiters and managers should be made aware of the law’s pay transparency rules and its restrictions on inquiring into prospective employees’ past compensation.

For more information regarding other states recently enacting Pay Equity Legislation, see our client briefing, *Maryland Enacts Pay Equity Legislation – Joining Growing List of States Enacting Pay Fairness Laws*.

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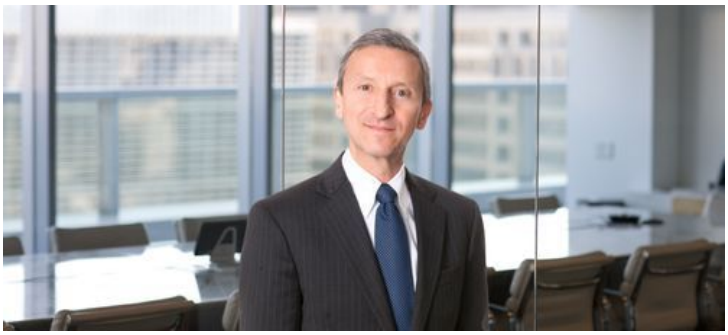

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