
EMPLOYMENT LAW ALERT APRIL 2018

MASSACHUSETTS EQUAL PAY ACT TO GO INTO EFFECT JULY 1, 2018

The Massachusetts Equal Pay Act (MEPA) goes into effect July 1, 2018. The Attorney General recently issued a Guidance concerning some of the key provisions of MEPA.

MEPA prohibits employers from paying different wages to employees of different genders who perform “comparable work,” defined as work that “requires substantially similar skill, effort, and responsibility, and is performed under similar working conditions.” Variations in pay are lawful if based on one or more of these six statutory factors:

- ▶ A system that rewards seniority with the employer;
- ▶ A merit system;
- ▶ A system that measures earnings by quantity or quality of production, sales, or revenue;
- ▶ The geographic location in which the job is performed;
- ▶ Education, training, or experience to the extent reasonably related to the particular job; or
- ▶ Travel if it is a regular and necessary condition of the job.

Wages include all forms of remuneration for employment. Comparability cannot be determined based on job titles alone.

MEPA provides employers with a complete defense to an unequal pay claim if the employer has conducted a good-faith, reasonable self-evaluation of its pay practices within the previous three years and before an employee sues. The self-evaluation must be reasonable in detail and scope, and the employer must show reasonable progress towards eliminating any unlawful gender-based wage differentials revealed by its self-evaluation. Employers eligible for this defense under MEPA will also have a defense to liability for any pay discrimination claim under the Massachusetts law prohibiting discrimination in employment. However, this affirmative defense does not apply to claims under federal laws, including the Federal Equal Pay Act.

Employers should consult with counsel before conducting a self-evaluation, as it may be discoverable in government investigations or litigation.

MEPA also prohibits employers from:

- ▶ Asking job candidates or their former employers for the candidate’s salary history.

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- ▶ Prohibiting employees from inquiring about, discussing, or disclosing the employee's wages or the wages of any other employees (subject to very limited exceptions for certain employees, for example, employees within human resources).
- ▶ Retaliating against employees who discuss their wages, disclose or inquire about wages of another employee, oppose an unlawful practice, or make a complaint under MEPA.

CONTACT

Please contact a member of our [Employment Law Practice](#) to discuss the impact of this new law on your company's policies and practices.

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