

## Massachusetts Prepares to Toughen Pay Equity Requirements

By Brian E. Lewis

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The Massachusetts legislature has passed a [bill](#) to amend the state's Equal Pay Act that would impose more rigorous equal pay obligations on employers by prohibiting certain conduct. Both house of the legislature (Senate and House of Representatives) passed the bill unanimously in July. The bill now waits for the Governor's signature.

Under the Equal Pay Act, employers are prohibited from discriminating against employees on the basis of gender in the payment of wages or salary for comparable work. The new law defines "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." A job title or job description alone, however, does not determine comparability.

The law also would prohibit employers from engaging in the following conduct:

- Screening job applicants based on wage or salary history, including:
  - requiring an applicant's prior wage or salary to satisfy the employer's criteria, or
  - requiring an applicant to disclose prior wage or salary history as part of the application process.
- Seeking the salary history of an applicant from a current or former employer, unless the prospective employer made an offer of employment to the applicant, and the applicant provided written authorization to the employer to confirm wage or salary history.
- Prohibiting employees from discussing their compensation with coworkers or colleagues (although the National Labor Relations Act already prohibits such conduct, the proposal creates a private right of action under state law for employees to enforce their rights).

In addition, the law enhances the enforcement scheme of the Equal Pay Act and extends the statute of limitations for claims under the Equal Pay Act from one year to three years. It also states that employees need not file a complaint with the Massachusetts Commission Against Discrimination or the Attorney General's Office before filing a private civil action in court. Should an individual prevail in court, the award of damages automatically would triple and include attorneys' fees.

To promote compliance, the law creates an affirmative defense for employers that have completed a good faith "self-evaluation" of their pay practices within the past three years. Employers may design their own "self-evaluation," so long as it is reasonable in detail and scope in light of the employer's size. Alternatively, the law provides that employers may utilize templates, forms, and guidance that will be issued by the Massachusetts Attorney General's Office, the agency charged with administering the statute.

If the Governor signs the bill, the law would become effective on January 1, 2018, which provides employers with a period in which to engage in "self-audits."

The initiatives in Massachusetts reflect the broader, nationwide emphasis on pay equity. In addition to the California and New York laws, on February 1, 2016, the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs issued a proposal to expand EEO-1 reporting obligations to require employers with at least 100 employees to report wage data as part of the EEO-1. (For details, see our article, [EEOC Proposes to Collect Pay Data from Employers](#).)

Given the imminent enactment of this law, as well as the nationwide push on pay equity issues, employers should consider conducting *privileged* internal audits of their compensation practices.

Jackson Lewis will continue to monitor and report on the proposed legislation and related regulatory endeavors. For assistance, please contact Jackson Lewis. Our [Pay Equity Resource Group](#) can assist with

### Meet the Author



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conducting privileged proactive pay audits and provide guidance to respond on all aspects of pay equity compliance.

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