

Massachusetts Mandates Pay Equity

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Earlier this week, Massachusetts Gov. Charlie Baker signed into law “[An Act to Establish Pay Equity](#),” which will go into effect July 1, 2018, and mandates: No employer shall discriminate in any way on the basis of gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work; provided, however, that variations in wages shall not be prohibited if based upon: (i) a system that rewards seniority with the employer; provided, however, that time spent on leave due to a pregnancy-related condition and protected parental, family and medical leave, shall not reduce seniority; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production, sales, or revenue; (iv) the geographic location in which a job is performed; (v) education, training or experience to the extent such factors are reasonably related to the particular job in question; or (vi) travel, if the travel is a regular and necessary condition of the particular job.

Moreover, the Act prohibits employees from lowering the wages of any employee solely to achieve compliance. Employees have three years from the date of an alleged violation to bring an action, with violations being defined as “when a discriminatory compensation decision or other practice is adopted;” “when an employee becomes subject to a discriminatory compensation decision or other practice;” or “when an employee is affected by application of a discriminatory compensation decision or practice, **including each time wages are paid, resulting in whole or in part from such a decision or practice** (emphasis added).” Additionally, the Act allows for recovery of unpaid wages, liquidated damages, attorneys’ fees and costs, but includes the caveat that any employee who recovers pursuant to a separate claim filed under the federal Equal Pay Act (29 U.S.C. § 206(d)) will be required to return to the employer the lesser of the amounts received under state or federal law. The Act additionally folds in reference to a number of other violations that may arise, including (among other things) a violation for retaliating against employees in relation to complaints/actions/cooperation with investigations under the Act, and a violation for prohibiting employees from discussing their wages in general (which also presents NLRA concerns). Likewise, the Act provides for certain affirmative defenses that an employer may argue and provides some detail as to what employers may or may not point to as a defense. Employers doing business in Massachusetts are encouraged to read the legislation as soon as possible to ensure their practices align with the Act and to obtain a full understanding of what the Act prohibits.

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