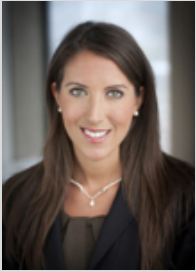


LABOR, EMPLOYMENT AND EMPLOYEE BENEFITS LEGAL UPDATE

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Massachusetts Enacts Robust Pay Equity Act

On August 1, 2016, Governor Charlie Baker signed into law the *Act to Establish Pay Equity* (the "Pay Equity Act"), which will go into effect on July 1, 2018 for all Massachusetts employers. The Pay Equity Act, which amends and strengthens Massachusetts' existing prohibition on discrimination in wages based on gender, is being called the most robust equal pay law in the country.

The Pay Equity Act prohibits employers from discriminating on the basis of gender in the payment of wages (including benefits) or paying "any person a salary or wage rate less than the rates paid to employees of a different gender for comparable work." The term "comparable work" does not mean that the work must be exactly the same; rather, the term is broadly defined to mean work that is "substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions."

Variations in wages are allowed *only* if they are based on: (i) a system that rewards seniority (but only if time spent on leave due to a pregnancy-related condition and/or protected parental, family, and medical leave does 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, if the factors are reasonably related to the job in question; or (vi) travel, if the travel is a regular and necessary condition of the particular job.

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This client alert is intended to inform you of developments in the law and to provide information of general interest. It is not intended to constitute legal advice regarding a client's specific legal issues and should not be relied upon as such. This client alert may be considered advertising under the rules of the Massachusetts Supreme Judicial Court.

In addition to prohibiting unequal pay based on gender, the Pay Equity Act prohibits employers from:

- Requiring employees to refrain from inquiring about, discussing, or disclosing information about their, or any other employee's, wages;
- Screening job applicants based on their wage or salary histories or requiring job applicants to disclose prior wages or provide a salary history. (*Massachusetts is the first state to ban employers from asking about salary histories – many employers will need to update their job application forms*);
- Seeking the salary history of any prospective employee from the employee or their employer, unless (a) if the prospective employee has voluntarily disclosed their salary history, the prospective employer may confirm the history or permit a prospective employee to confirm the history; and (b) an offer of employment with compensation has been made to the prospective employee; or
- Discharging or retaliating against any employee for opposing any act or practice made unlawful by the Pay Equity Act, making a complaint under the Pay Equity Act, testifying, assisting, or participating in any investigation or proceeding under the Act, or disclosing information about their wages, or discussing or inquiring about the wages of any other employee.

Notably, employers may prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' compensation information from disclosing such information without the prior written consent from the employee whose information is sought or requested.

Employees are not required to pursue a claim of discrimination with the Massachusetts Commission Against Discrimination before filing an equal pay claim in court. Similar to the hefty violations of the Wage Act, employers found to violate the Pay Equity Act are liable for the amount of the unpaid wages (including benefits), liquidated damages, and attorneys' fees.

Employers may protect against Pay Equity Act claims by conducting a self-evaluation of their pay practices and demonstrating that reasonable progress has been made towards eliminating compensation differentials based on gender for comparable work. Notably, employers are not allowed to attempt to comply with the Pay Equity Act by *reducing* any employee's salary or wages.

The Attorney General is authorized to issue regulations interpreting and applying the Pay Equity Law and initiate suits to enforce the Pay Equity Act.

If you have any questions about the requirements of the Pay Equity Act or would like assistance conducting a self-evaluation, please contact a member of the Labor and Employment Law Group at Mirick O'Connell.

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