



## The New Massachusetts Pay Equity Act: What it Does and What it Means

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Among the bills to emerge from the scrum that marked the end of the Massachusetts legislative session last month was a beefed-up Pay Equity Act. The new Act, which takes effect on July 1, 2018, replaces the state's previous equal pay law, providing broader definitions, new prohibitions, enhanced penalties, and a unique affirmative defense for employers. Below, we hit the highlights of the new Act and explain why employers might want to start thinking about it now.

### Targeting Pay Differentials

In addition to a general prohibition on discriminatory gender-based pay decisions, the Act requires equal pay for employees of different genders who perform comparable work. "Comparable work" is defined as work that requires similar skill, effort, and responsibility and is performed under similar working conditions. Under the Act, pay for comparable work can only vary by (i) seniority, (ii) merit, (iii) quantity or quality of work, (iv) geographic location, (v) education, training, or experience, or (vi) travel requirements. As with other Massachusetts wage laws, employers cannot contract with employees to work for less than they are entitled under the Act.

### Control of Pay-Related Information

The Act also gives employees greater control over their own compensation information. While employees have long been permitted to discuss pay rates with each other under the National Labor Relations Act, the Pay Equity Act enshrines that right in Massachusetts law. In addition, the Act prohibits employers from seeking pay history information about job applicants until an offer of employment has been made, although it does permit employers to verify compensation information that an applicant has voluntarily provided.

### Consequences for Violations

The Act provides that either aggrieved employees or the attorney general may sue to collect wages that were unpaid due to impermissible gender-based pay disparities. A prevailing plaintiff will be entitled to unpaid wages, an additional equal amount of liquidated damages, attorneys' fees, and court costs. Clearing up a question that often arises in pay discrimination cases, the Act provides that each discriminatory wage payment constitutes a new violation for statute-of-limitations purposes.

### A New Affirmative Defense for Employers

To encourage employers to review their payrolls for gender-based disparities, the Act offers a unique affirmative defense to discriminatory pay claims. An employer who has completed a good-faith evaluation of its pay practices within three years prior to a claim and can demonstrate reasonable progress toward eliminating pay differentials between genders can avoid liability under both the Act and G.L. c. 151B Massachusetts' all-purpose anti-discrimination statute. The Act does not allow employers to eliminate pay differentials by reducing employees' pay.

An employee may not use the results of a self-evaluation against an employer in court as evidence of an unlawful pay disparity if the alleged violation occurred prior to the self-evaluation or in the six months after. If the employer can demonstrate that it has begun to implement a plan for addressing gender-based wage differentials, that bar on admissibility extends to two years from the date of the self-evaluation.



### What to Do Now

While the Act does not take effect until July 1, 2018, employers can use the lead time to begin reviewing their payrolls. Employers need to determine which positions qualify as “comparable work” and how pay rates between the genders break down across those roles. As indicated by the national news coverage it has generated, the Act was designed to make significant changes to the Massachusetts pay landscape. Employers should get out in front of those changes, and Locke Lord is ready to help.

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