

## **Alert** | Labor & Employment



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### **Massachusetts Pay Equity Law Takes Effect July 1, 2018**

Massachusetts employers are reminded that key amendments to the Massachusetts Equal Pay Act (MEPA) take effect on July 1, 2018.

“An Act to Establish Pay Equity” was signed into law on Aug. 1, 2016, with an effective date of July 1, 2018. A previous GT Alert (“[Massachusetts Enacts Comprehensive Pay Equity Law](#),” August 2016) discusses the law’s major provisions.

#### **Equal Pay for Comparable Work**

MEPA requires equal pay for comparable work. The statute 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.” The new law specifies that variations in wages are not prohibited if based on any of the following factors: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production, sales, or revenue; (4) the geographic location in which a job is performed; (5) education, training, or experience; or (6) travel that is a regular and necessary condition of the particular job.

#### **Affirmative Defense for Massachusetts Employers**

MEPA provides a complete defense to a legal claim under MEPA for any employer that has conducted a good faith, reasonable self-evaluation of its pay practices. The affirmative defense is available if the employer has completed the self-evaluation within the three year period prior to the initiation of a MEPA

claim. To utilize the affirmative defense, the employer must demonstrate that, as a result of the self-evaluation, reasonable progress has been made toward eliminating any wage differentials based on gender for comparable work.

### Effects on Hiring Process

The new law also impacts the hiring process. It provides that employers may not seek the salary or wage history of any prospective employee before making an offer of employment that includes compensation. Accordingly, employers are prohibited from requesting an applicant's salary history or seeking salary history from the applicant's current or former employer. Nothing in MEPA prohibits an employer from asking a prospective employee about his or her compensation needs or expectations. However, employers should proceed with caution when asking such questions so that such questions are not framed or posed in a way that is intended to elicit information from the prospective employee about his or her salary or wage history.

### Next Steps for Massachusetts Employers

In light of the prohibition on salary history questions, Massachusetts employers should consider reviewing their employment application process and documentation, as well as educating managers involved in the hiring process. Employers may also wish to consider conducting a self-evaluation of their pay practices.

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