

# Massachusetts Requires Pay Range Disclosure and Pay Data Reporting

Article By:

Suzanne King

Soyoung Yoon

On July 31, 2024, Massachusetts Governor Maura T. Healey made it official – with the goal of closing existing wage gaps, Massachusetts is the latest state to require employers to disclose pay range information.

Joining almost a dozen other states that require some form of pay range disclosure (including neighbors Connecticut and Rhode Island), Massachusetts will soon require covered employers to disclose pay range information in job postings and to current employees in certain circumstances. The new law also requires covered employers to submit EEO-1 pay data annually to the Secretary of the Commonwealth.

## Effective Dates

Employers will have some time to get ready for these new requirements:

Date	Covered Employer	Obligation
February 1, 2025	Employers with 100 or more employees in Massachusetts and subject to federal EEO filing requirements	Submit demographic and pay data to the Secretary of the Commonwealth
July 31, 2025	Employers with 25 or more employees in Massachusetts	Pay range disclosure obligations go into effect

## Pay Range Posting and Disclosure Requirements

Employers with 25 employees or more in Massachusetts are required to:

- Disclose the pay range for a specific position in the job posting.
- Provide the pay range for a specific position to an employee who is offered a promotion or transfer to a new position with different job responsibilities.
- Upon request, provide the pay range for a specific position to an employee holding such

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position or an applicant for the position.

“Pay range” means “the annual salary range or hourly wage range that the covered employer reasonably and in good faith expects to pay for such position at that time [of posting or disclosure].” Notably, and unlike similar laws in other states (e.g., Maryland), the new law does not require disclosure of other anticipated forms of compensation (e.g., bonuses, commissions) or other benefits.

“Posting” includes “any advertisement or job posting intended to recruit job applicants for a particular and specific employment position, including, but not limited to, recruitment done directly by a covered employer or indirectly through a third party.”

## **Pay Data Reporting Requirements**

The new law also imposes certain pay data reporting obligations on employers that: (a) have 100 or more employees in Massachusetts at any time during the prior calendar year, and (b) are subject to the federal filing requirements of a wage data report.

Covered employers are required to submit to the Secretary of the Commonwealth an EEO data report that includes workforce “demographic and pay data categorized by race, ethnicity, sex, and job category.” Submission of a properly completed federal EEO-1 Employer Information Report will satisfy this filing requirement.

Employers must submit this data to the Secretary of the Commonwealth annually by February 1. If applicable, covered employers are also required to submit EEO-3, -4, or -5 data biannually. The Secretary will provide this information to the Massachusetts Executive Office of Labor and Workforce Development for the publication of aggregated data on its website by July 1 of each year.

Importantly, the law specifically clarifies that individual employer reports in the custody of the Secretary of Labor and Workforce Development will **not** be considered “public records” subject to disclosure under the Massachusetts Public Records Law. However, this data may be discoverable in litigation.

## **No Retaliation**

Covered employers are prohibited from discharging or in any other manner retaliating or discriminating against an employee or applicant because the employee or applicant has:

- Taken action to enforce their rights pursuant to the law.
- Made a complaint to their employer, the employer’s agent, or the attorney general regarding an alleged violation of the law.
- Instituted, or caused to be instituted, any proceeding under the law.
- Testified or is about to testify in any such proceeding.

## **Enforcement**

The attorney general’s office has “exclusive jurisdiction” to enforce the law, and may seek declaratory or injunctive relief and impose fines for failing to post or disclose pay range information as requested or failing to submit EEO reports.

- First violations will be subject to a warning.
- Second offenses are subject to a fine of not more than \$500.
- Third offenses are subject to a fine of not more than \$1,000.
- Fourth or subsequent offenses are subject to civil fines of \$7,500 to \$25,000 per violation, depending on the circumstances.

Notably, the law does not include a private right of action for applicants or employees against their employers. This is a significant departure from pay disclosure laws in other states (e.g., Washington) where aggrieved employees can bring an action against their employer in court for injunctive relief or damages. Of course, employees already have several sources of protection under federal and state law if they believe they are being discriminated against in their pay.

Also, the law specifically clarifies that violations are not subject to treble damages under the Massachusetts Wage Act.

## Next Steps for Covered Employers

While many employers have already begun sharing pay range information in job postings, it is much less common at this point for employers to share pay range information upon the request of a current employee. To prepare for this new requirement, we encourage all employers with 25 or more employees in Massachusetts to take the following steps **before** July 31, 2025:

- Carefully review your current process for setting pay rates as well as your current job titles. This is a good time to evaluate whether any changes are needed.
- Carefully analyze your current pay data to ensure there are no pay equity issues. Employers with 100 or more employees should also consider conducting a full pay equity audit to identify any concerns. As always, we recommend doing so under the attorney-client privilege.
- Consult with employment counsel to address any issues that surface in your analysis of current pay data or your pay equity audit.
- Finally, multistate employers should develop a compliance strategy for dealing with potentially differing pay disclosure requirements.

Fortunately, Massachusetts employers have time to prepare for these new obligations. That time will go quickly, however, so we encourage employers to get started soon to ensure that things are in good order come February 1 and July 31, 2025.

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