

Massachusetts Joins Growing Number of States With a Pay Transparency Law

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On 31 July 2024, Massachusetts Governor Maura Healey signed into law the Act Relative to Salary Transparency¹ (the Act). The Act has been touted by the governor as an important step toward closing wage gaps and ensuring equal pay for equal work and a key expansion of the Massachusetts Equal Pay Act², which was enacted in July 2018.

This alert summarizes the law and provides recommendations for employers as they prepare for the law to take effect in 2025, as described more fully below. In passing this new legislation, Massachusetts joins 11 other states that have already passed pay transparency laws—California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Minnesota, Nevada, New York, Rhode Island, and Washington.³

Pay Range Disclosure

Under the Act, public and private employers with 25 or more employees in Massachusetts must:

1. Disclose pay ranges in job postings;
2. Provide pay ranges of positions to employees who are offered promotions or transfers to new positions with different job responsibilities; and
3. On request, provide the pay range to an employee who already holds an employment position or to an applicant for such 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.” At this point, employers are not required to include other compensation information, such as bonuses, commissions, or benefits.

“Posting” means “any advertisement or job posting intended to recruit job applicants for a particular and specific employment position,” including direct posts by employers or indirect posts through third

parties.

The law is silent on whether it applies to postings for remote jobs, including jobs that could be performed by remote workers in Massachusetts.

Equal Employment Opportunity and Wage Data Reporting

The Act also differs from most other states' pay transparency laws through its inclusion of an additional reporting requirement for certain employers. Specifically, public and private employers with 100 or more employees in Massachusetts at any time during the prior calendar year who are also subject to federal wage data reporting requirements must submit an equal employment opportunity (EEO) and wage data report to the Secretary of the Commonwealth.

Private employers must provide this information annually, while unions, state and local governments, and elementary and secondary school systems must submit their reports every other year. The submissions can be in the form of the covered employer's federal EEO reports. This requirement is similar to those set forth in Illinois' Equal Pay Act of 2003.⁴

The employer reports will not be considered "public records." However, the Executive Office of Labor and Workforce Development will publish on its website aggregate wage and workforce data reports based on the employer data it receives.

Anti-Retaliation Provision

The Act prohibits employers from discharging, retaliating against, or discriminating against an employee or applicant who has (i) taken action to enforce their rights under the Act, (ii) made a complaint to their employer or the employer's agent or to the attorney general regarding a violation of the Act, (iii) instituted, or caused to be instituted, a proceeding under the Act, or (iv) testified or is about to testify in any such proceedings.

Enforcement

The Massachusetts attorney general has exclusive jurisdiction to enforce the Act by seeking injunctive or declaratory relief. There is no private right of action for employees or job applicants.

Covered employers who violate the Act will also be subject to:

1. A warning for the first offense;
2. A fine of not more than US\$500 for the second offense;
3. A fine of not more than US\$1,000 for the third offense; and
4. A fine of US\$7,500 to US\$25,000 per offense for the fourth offense or subsequent offenses, depending on the circumstances.

Footnotes

¹ H.B. No. 4890.

² MASS. GEN. LAWS ch. 149 § 105A.

³ See April Boyer, Meghan T. Meade & Maricé Guzmán, *Help Wanted: What Employers Need to*

Know About Pay Transparency Requirements in Job Postings, K&L GATES HUB (Oct. 31, 2022), <https://www.klgates.com/Help-Wanted-What-Employers-Need-to-Know-About-Pay-Transparency-Requirements-in-Job-Postings-10-28-2022>.

⁴ 820 ILL. COMP. STAT. 112/11 (2024) (requires private businesses with 100 or more employees in Illinois to submit an application to obtain an Equal Pay Registration Certificate by providing certain pay, demographic, and other data to the Illinois Department of Labor by March 24, 2024 and to recertify every two years after the initial submission).

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