

Considerations for Employers in Massachusetts

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Like New Jersey's [Diane B. Allen Equal Pay Act](#), the Massachusetts Equal Pay Act (MEPA) amendments went into effect on July 1, 2018. Regarded as one of the first comprehensive fair pay laws to be passed at the state level, [MEPA](#) has served as not only as a catalyst, but a model, for the patchwork of fair pay laws being enacted across the nation.

Outlined below are some of the law's main components and best practices employers can implement to comply and mitigate risk.

Comparable Work

MEPA requires equal pay for "comparable work." Under MEPA, "comparable work" is defined as work that "requires substantially similar skill, effort, and responsibility." This expands the pool of comparators for equal pay claims beyond those in the same job title or function.

- **Tip:** Consider which jobs may be "comparable," despite not being the same. The Attorney General Guidance notes that comparable jobs can span functional areas or business units. Think broadly!

Permissible Differences in Pay

MEPA significantly limits defenses employers can use to justify differences in pay for comparable work. Under MEPA, differences can be explained only by:

1. A seniority system;
 2. A merit system;
 3. A system measuring earnings by quantity or quality of production;
 4. Geographic location;
 5. Education, training or experience; and
 6. Travel that is a regular and necessary part of the job.
- **Tip:** Be ready to prove a valid reason for pay differences. Noticeably absent from the list above is salary history – salary history cannot be used to justify any difference in compensation. Any differences should fall within one of the six buckets above. Train your hiring managers and HR staff accordingly.

Salary History

Employers cannot seek salary history information from a prospective employee *unless* it is to confirm wage or salary information that has been shared voluntarily by the employee or after an offer of employment has been made.

- **Tip:** Plain and simple – do not ask about salary history. Ensure that the question is removed from applications and interview question templates. Communicate this new rule to all managers involved in the hiring process.

Self-Evaluation Defense

Under MEPA, employers can establish an affirmative defense against liability if they conduct a reasonable and good faith self-evaluation of their pay practices. This evaluation must be within the previous three years before an employee files an action and employers must be able to show reasonable progress toward eliminating discriminatory wage differentials.

- **Tip:** Consult with counsel and consider conducting a privileged pay analysis to mitigate risk should an employee bring a claim. Also ensure that organizational leaders are on board to make pay adjustments, if determined necessary.

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