

EQUAL PAY ACT SUMMARY

Gender Discrimination in wage payment is illegal in MA as of July 2018.

Comparable work must be compensated the same. "Comparable work" means work requiring similar skill, effort and responsibility.

"Wages" means any form of remuneration

Some wage variations are allowed based upon the following:

- seniority
- a merit system
- productivity/sales/revenue
- geographic location
- education/training/experience in same area
- regular travel

Remedies for Violations

- employee can sue on own behalf or on behalf of a class of employees
- recovery equals amount underpaid plus that amount as liquidated damages and attys fees/cost
- Attorney General can also bring a claim against employer

NB. Employee's previous pay history is no defense

3 Year Statute of Limitations from time of alleged violation

Also Illegal-

- to require employees not to discuss or inquire about their wages or that of others – but employer can require that HR director seek prior written permission from an employee before disclosing wage info of that employee
- to seek pay history of prospective employee unless prospect discloses same

Affirmative Defenses:

Completed self-evaluation of pay practices
Demonstrating that reasonable progress has been made toward eliminating pay disparities

NB. A self-evaluation which is deficient in scope, but which still helps eliminate disparities in pay can eliminate liquidated damages

An Act to establish pay equity.

SECTION 1. Section 1 of chapter 149 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the definition of "Woman".

SECTION 2. Said chapter 149 is hereby amended by striking out section 105A, as so appearing, and inserting in place thereof the following section:-

Section 105A. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Comparable work", shall mean work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions; provided, however, that a job title or job description alone shall not determine comparability.

"Working conditions", shall include the environmental and other similar circumstances customarily taken into consideration in setting salary or wages, including, but not limited to, reasonable shift differentials, and the physical surroundings and hazards encountered by employees performing a job.

"Wages", for purposes of this section, shall include all forms of remuneration for employment.

(b) No employer shall discriminate in any way on the basis of gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work; provided, however, that variations in wages shall not be prohibited if based upon: (i) a system that rewards seniority with the employer; provided, however, that time spent on leave due to a pregnancy-related condition and protected parental, family and medical leave, shall not reduce seniority; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production, sales, or revenue; (iv) the geographic location in which a job is performed; (v) education, training or experience to the extent such factors are reasonably related to the particular job in question; or (vi) travel, if the travel is a regular and necessary condition of the particular job.

An employer who is paying a wage differential in violation of this section shall not reduce the wages of any employee solely in order to comply with this section.

An employer who violates this section shall be liable to the employee affected in the amount of the employee's unpaid wages, and in an additional equal amount of liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any 1 or more employees for and on their own behalf, or on behalf of other employees similarly situated. Any agreement between the employer and any employee to work for less than the wage to which the employee is entitled under this section shall not be a defense to an action. An employee's previous wage or salary history shall not be a defense to an action. The court shall, in addition to

any judgment awarded to the plaintiff, award reasonable attorneys' fees to be paid by the defendant and the costs of the action.

The attorney general may also bring an action to collect unpaid wages on behalf of 1 or more employees, as well as an additional equal amount of liquidated damages, together with the costs of the action and reasonable attorneys' fees. Such costs and attorneys' fees shall be paid to the commonwealth. The attorney general shall not be required to pay any filing fee or other cost in connection with such action.

If an employee recovers unpaid wages under this section and also files a complaint or brings an action under 29 U.S.C. § 206(d) which results in an additional recovery under federal law for the same violation, the employee shall return to the employer the amounts recovered under this section, or the amounts recovered under federal law, whichever is less.

Any action based upon or arising under sections 105A to 105C, inclusive, shall be instituted within 3 years after the date of the alleged violation. For the purposes of this section, a violation occurs when a discriminatory compensation decision or other practice is adopted, when an employee becomes subject to a discriminatory compensation decision or other practice or when an employee is affected by application of a discriminatory compensation decision or practice, including each time wages are paid, resulting in whole or in part from such a decision or practice.

Notwithstanding the requirements of section 5 of chapter 151B, a plaintiff shall not be required to file a charge of discrimination with the Massachusetts Commission Against Discrimination as a prerequisite to bringing an action under this section.

(c) It shall be an unlawful practice for an employer to:

(1) require, as a condition of employment, that an employee refrain from inquiring about, discussing or disclosing information about either the employee's own wages, or about any other employee's wages. Nothing in this subsection shall obligate an employer to disclose an employee's wages to another employee or a third party;

(2) seek the wage or salary history of any prospective employee from the prospective employee or any current or former employer; provided, however, that (i) nothing in this paragraph shall prohibit a prospective employee from voluntarily disclosing his or her wage or salary history; (ii) a prospective employer may require a prospective employee to confirm prior wages or salary, or to permit the prospective employer to do so, if the prospective employee has voluntarily disclosed such information; ; and (iii) a prospective employer may seek or confirm a prospective employee's wage or salary history after any offer of employment with compensation has been made to the prospective employee;

(3) discharge or in any other manner retaliate against any employee because the employee: (i)

opposed any act or practice made unlawful by this section; (ii) made or indicated an intent to make a complaint or has otherwise caused to be instituted any proceeding under this section; (iii) testified or is about to testify, assist or participate in any manner in an investigation or proceeding under this section; or (iv) disclosed the employee's wages or has inquired about or discussed the wages of any other employee.

No employer shall contract with an employee to avoid complying with this subsection, or by any other means exempt itself from this subsection; provided, however, that an employer may prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' compensation information, from disclosing such information without prior written consent from the employee whose information is sought or requested, unless the compensation information is a public record as defined in clause 26 of section 7 of chapter 4.

This subsection shall be enforced in the same manner as subsection (b); provided, however, that an action based on a violation of clause (2) of this subsection may be brought by or on behalf of 1 or more applicants for employment; and provided, further, that in any action brought under this subsection, the plaintiff may also recover any damages incurred.

(d) An employer against whom an action is brought alleging a violation of subsection (b) and who, within the previous 3 years and prior to the commencement of the action, has both completed a self-evaluation of its pay practices in good faith and can demonstrate that reasonable progress has been made towards eliminating wage differentials based on gender for comparable work, if any, in accordance with that evaluation, shall have an affirmative defense to liability under subsection (b) and to any pay discrimination claim under section 4 of chapter 151B. For purposes of this subsection, an employer's self-evaluation may be of the employer's own design, so long as it is reasonable in detail and scope in light of the size of the employer, or may be consistent with standard templates or forms issued by the attorney general.

An employer who has completed a self-evaluation in good faith within the previous 3 years and prior to the commencement of the action, and can demonstrate that reasonable progress has been made towards eliminating wage differentials based on gender for comparable work in accordance with that evaluation, but cannot demonstrate that the evaluation was reasonable in detail and scope, shall not be entitled to an affirmative defense, but shall not be liable for liquidated damages under this section.

Evidence of a self-evaluation or remedial steps undertaken in accordance with this subsection shall not be admissible in any proceeding as evidence of a violation of this section or section 4 of chapter 151B that occurred prior to the date the self-evaluation was completed or that occurred either (i) within 6 months thereafter or (ii) within two years thereafter if the employer can demonstrate that it has developed and begun implementing in good faith a plan to address any

wage differentials based on gender for comparable work.

An employer who has not completed a self-evaluation shall not be subject to any negative or adverse inference as a result of not having completed a self-evaluation.

(e) The attorney general may issue regulations interpreting and applying this section.

SECTION 3. Said section 16 of said chapter 151, as so appearing, is hereby further amended by inserting after the word "orders", in line 5, the following words:- or notices.

SECTION 4. This act shall take effect on July 1, 2018.



AIM HR Round Table Massachusetts Pay Equity Law

- I. MA Pay Equity Law
 - a. Passed in 2016, effective July 1, 2018
 - i. 2 years to get compliant
 - ii. Possible Attorney General regulations or guidance
 - b. Key provisions –
 - i. Prohibition on pre-employment inquiries into applicants' salary histories
 - ii. Pay transparency
 - iii. Equal pay for comparable work

- II. Prohibition on pre-employment inquiries into applicants' salary histories
 - a. May not ask applicant or applicant's current or former employer
 - b. A prospective employer may seek or confirm a prospective employee's wage or salary history after any offer of employment with compensation has been made to the prospective employee

- III. Pay transparency
 - a. No employer shall require, as a condition of employment, that an employee refrain from
 - i. inquiring about,
 - ii. discussing
 - iii. or disclosinginformation about either
 - i. the employee's own wages, or
 - ii. about any other employee's wages

- IV. Equal pay for comparable work
 - a. No employer shall
 - i. discriminate in any way on the basis of gender in the payment of wages, or
 - ii. pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work
 - b. Comparable work –
 - i. substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions
 - ii. job title or job description alone shall not determine comparability

- iii. comparability is not limited to employees in the same department
- c. Working conditions –
 - i. shift differentials, physical surroundings and hazards
- d. Pay variations allowable if based on
 - i. Seniority system, no deduction for pregnancy-related care or protected parental, family or medical leave
 - ii. Bona fide merit system
 - iii. System which measures earnings by quantity or quality of production, sales, or revenue
 - iv. Geographic location in which a job is performed;
 - v. Education, training or experience to the extent such factors are reasonably related to the particular job in question
 - vi. Travel, if the travel is a regular and necessary condition of the particular job

V. Legal actions for gender-based pay inequities

- a. Individual or class actions for double damages over three years
- b. Affirmative defense to employers who complete self-evaluation if
 - i. done within the previous 3 years and prior to the commencement of the action
 - ii. completed in good faith
 - iii. company can demonstrate reasonable progress towards eliminating wage differentials based on gender for comparable work
- c. An employer's self-evaluation may be
 - i. of the employer's own design, so long as it is reasonable in detail and scope in light of the size of the employer, or
 - ii. may be consistent with standard templates or forms issued by the attorney general.
- d. If employer can demonstrate reasonable progress but not that self-evaluation was reasonable in scope and detail,
 - i. No affirmative defense
 - ii. Not liable for liquidated damages
- e. Self-evaluation and remedial actions may not be used as evidence against employer for
 - i. 6 months after completion
 - ii. 2 years after completion if the employer can demonstrate that it has developed and begun implementing in good faith a plan to address any wage differentials based on gender for comparable work.

Russ Sullivan, Vice President

rsullivan@aimhrsolutions.com

Kyle Pardo, Sr. Director

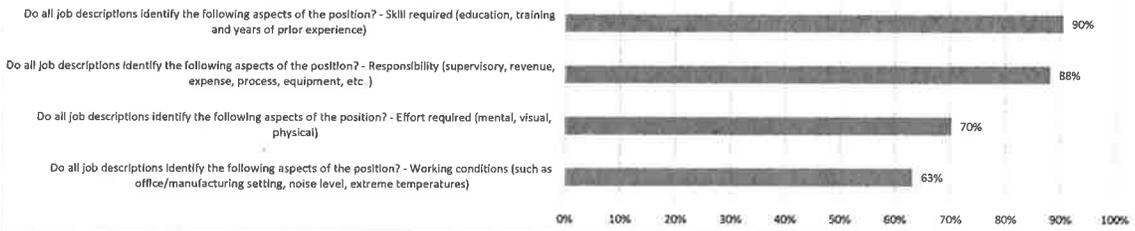
Kpardo@aimhrsolutions.com

**AIM HR Round Table
Pay Equity Survey Results**

Preparation



Job Descriptions



HRIS Capacity

