

MASSACHUSETTS EMPLOYMENT LAW

Fair Employment – Pay Equity Act



The federal Equal Pay Act requires employers to pay men and women equally if they perform substantially equal work within the same establishment. In addition, many states, including Massachusetts, have enacted their own equal pay laws prohibiting wage discrimination based on gender.

This Employment Law Summary provides an overview of Massachusetts' Pay Equity Act (MPEA) and the amendments to it that go into effect on **July 1, 2018**.

STATE RESOURCES

Massachusetts Commission Against Discrimination (MCAD) [website](#)

MPEA Changes

Text of both the current MPEA and the version that becomes effective as of July 1, 2018, is available [here](#).

MPEA Amendments

Text of the MPEA amendments that take effect July 1, 2018, is available [here](#).

MPEA Complaint Process

The MCAD explains the discrimination complaint process in this [guide](#).

PROHIBITED PRACTICES – OVERVIEW

Currently, Massachusetts law prohibits all employers in the state from:

- Discriminating in the payment of wages as between the sexes;
- Paying any person a salary or wage rate less than the rates paid to employees of the opposite sex for work of like or comparable character, or work on like or comparable operations; and
- Retaliating against an employee for making a complaint or participating in any proceeding relating to a claim that the employer violated the state's equal pay laws.

Effective **July 1, 2018**, the amended MPEA modifies these requirements and also prohibits employers from:

- Requiring employees to refrain from discussing their own or other employees' wages; Screening job applicants based on wage or salary history; and
- Requesting information about applicants' prior wages.

Employers may not exempt themselves from the amended MPEA's provisions through any means, including agreements with employees.

PROHIBITED PRACTICES – EFFECTIVE JULY 1, 2018

PAY DISCRIMINATION

The amended MPEA prohibits employers from:

- Discriminating in the payment of wages on the bases of gender; and
- Paying any person a salary or wage rate less than the rates paid to employees of a different gender for comparable work.

Under the law, "comparable work" may not be determined by job title or job description

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alone. Instead, the term is defined as work that:

Requires substantially similar skill, effort and responsibility; and

Is performed under similar working conditions.

The term “working conditions” includes the circumstances customarily taken into consideration in setting salary or wages. This includes, but is not limited to:

- Reasonable shift differentials;
- Physical surroundings; and
- Hazards encountered by employees performing a job.

Employers may not reduce any employee’s wages in order to comply with the MPEA’s prohibition against gender-based pay discrimination.

EXCEPTIONS

The amended MPEA allows employers to pay different wages to employees of different genders for comparable work if the wages are based on:

- A seniority system, as long as time spent on leave due to a pregnancy-related condition or under protected medical and family leave laws does not reduce seniority;
- A merit system;
- A system that measures earnings by quantity or quality of production or sales;
- The geographic location in which a job is performed;
- Education, training or experience, to the extent reasonably related to the particular job in question and consistent with business necessity; or
- Travel, if the travel is a regular and necessary condition of the particular job.

PROHIBITING EMPLOYEES FROM DISCUSSING WAGES

Under the amended MPEA, employers may **not** require an employee, as a condition of employment, to refrain from inquiring about, discussing or disclosing information regarding:

- The employee’s own wages, benefits or other compensation; or
- Any other employee’s wages.

These prohibitions do **not** mean that employers have any obligation to disclose an employee’s wages to any other employee or to a third party.

SCREENING JOB APPLICANTS BASED ON PRIOR WAGES OR SALARY HISTORY

The amended MPEA prohibits employers from screening job applicants based on their prior wages or salary histories. Specifically, employers may **not**:

- Ask an applicant to disclose his or her wage or salary history;
- Seek an applicant’s wage or salary history from any current or former employer; or

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- Require an applicant's prior wages or salary to satisfy any minimum or maximum criteria in order for the applicant to be considered or hired for employment.

However, an employer may **confirm** an applicant's wage or salary history if:

- The applicant has voluntarily disclosed the information to the employer; or
- The employer has made an offer of employment, for which compensation has already been negotiated, to the applicant (under these circumstances, the employer may also **seek** the information from the applicant's current or former employers).

RETALIATION

Employers may not discharge or in any other manner discriminate or retaliate against an individual because he or she:

- Opposes any act or practice that is prohibited under the MPEA;
- Makes or plans to make a complaint or institute a legal action concerning violations of the MPEA;
- Testifies, assists, or in any manner participates or plans to participate in an investigation or proceeding related to alleged violations of the MPEA;
- Discloses or discussed his or her wages; or
- Inquires about or discusses the wages of any other employee.

ENFORCEMENT

The MPEA is administered and enforced by the [Massachusetts Commission Against Discrimination](#) (MCAD). In contrast to the current MPEA and other anti-discrimination laws the MCAD enforces, the amended MPEA does **not** require an individual to file a complaint with the MCAD before he or she can file a lawsuit in court against an employer for pay discrimination. Effective **July 1, 2018**, individuals who believe their rights under the amended MPEA have been violated may *either* file a complaint with the MCAD *or* sue the employer in court.

The amendments also extend the current MPEA's one-year filing deadline for pay equity claims. Effective **July 1, 2018**, individuals have **three years** after the date of an alleged violation to initiate an action against an employer. For this purpose, a violation occurs when:

- A discriminatory compensation decision or other practice is adopted;
- An employee becomes subject to a discriminatory compensation decision or practice; or
- An employee is affected by application of a discriminatory compensation decision or practice, including each time wages are paid.

If the MCAD or a court finds that an employer has violated the amended MPEA, the employer may be ordered to pay:

- The amount of the affected individual's unpaid wages;
- An additional amount in liquidated damages, equal to the affected individual's unpaid wages;
- Any costs or attorneys' fees associated with the action; and
- Any other damages incurred by the affected individual.

Employers that **willfully** violate the MPEA may also be ordered to pay a fine of up to **\$100**. Effective **July 1, 2018**, the maximum fine is increased to **\$1,000**.

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EMPLOYER DEFENSES

Under the amended MPEA, an employer may create an affirmative defense against a future pay discrimination claim by:

- Performing a good faith self-evaluation of its pay practices within **three years prior** to the claim's commencement; and
- Making progress toward eliminating wage differentials based on gender for comparable work, if any, in accordance with its evaluation.

An employer that satisfies the above requirements may avoid both damages and liquidated damages if it can show that its self-evaluation is reasonable in detail and scope in light of its size. An employer that satisfies the above requirements but cannot make this showing may have an affirmative defense against liquidated damages only.

While the amended MPEA allows employers to design their own self-evaluations, it also authorizes the Massachusetts attorney general to issue regulations and standard forms for employers to use for the self-evaluation defenses. Employers should watch for these and other future guidance on the attorney general's [forms and publications](#) page and the MCAD's [website](#).