

MASSACHUSETTS JOINS GROWING NUMBER OF STATES WITH A PAY TRANSPARENCY LAW

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Please be aware that, because of requirements under the Massachusetts Constitution, the Act's compensation disclosure requirements will take effect on **October 29, 2025** (not within one year of the July 31, 2024 signing, as stated in the Act).

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:

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

Under the Act, one or more job postings made by the same employer during a 48-hour period will be considered one offense.

For the first two years of the pay transparency and wage data reporting requirements, covered employees shall have two business days after notice of a violation to cure any defect before a fine is imposed.

Violations of the Act will not subject employers to treble damages under the Massachusetts Wage Act.

EFFECTIVE DATES

By 1 February 2025, employers subject to the Act's EEO and wage data reporting requirement must submit their EEO and wage data reports to the Secretary of the Commonwealth.

The Act's pay transparency requirements take effect on 31 July 2025.

RECOMMENDATIONS FOR EMPLOYERS

8. Start developing or updating pay ranges for positions.
9. Analyze pay practices and, if necessary, update them to address improper wage disparities. Remember, the Massachusetts Equal Pay Act (MEPA) includes a safe harbor provision that allows employers to avoid liability for pay discrimination if they can show that they conducted a good faith, reasonable self-evaluation of their pay practices within the previous three years and before an action is filed. Beginning 31 July 2025, employees will be able to see pay ranges in job postings and will be able to request pay ranges. Such information could lead to an increased focus by employees on wage disparities and an increased risk of pay discrimination claims. Therefore, it is essential that employers conduct self-evaluations before 31 July 2025 so they can avail themselves of MEPA's affirmative defense.
10. Develop a communication plan to convey the Act's pay transparency obligations to employees and job applicants.
11. Assess how the Act's requirements work with existing state or municipality requirements to which employers are already or will be subject.
12. Review and update federal EEO process to include a state filing by 1 February 2025 and thereafter. The submissions can be done in paper or electronic form, including through a special email address or portal that the Secretary of the Commonwealth may develop.
13. Monitor the attorney general's "public awareness campaign," which must be conducted no more than six months after the Act's 31 July 2025 effective date and must include, without limitation, (i) providing information about the Act on the attorney general's website and (ii) otherwise informing covered employers of the Act's requirements. Such information could include helpful FAQs to address outstanding issues, such as whether the job posting requirements apply to remote work that could be done from Massachusetts and, relatedly, whether job postings can exclude Massachusetts applicants.

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).

KEY CONTACTS



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