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Time to Act for Massachusetts Employers: Are You Prepared for the Amended Equal Pay Act?

Law and the Workplace Blog on **December 1, 2017**

Massachusetts is soon to join the mounting crusade against the gender pay gap as the effective date of Massachusetts' amended Equal Pay Act – July 1, 2018 – draws near. In August 2016, Governor Charlie Baker passed an amendment to the state's equal pay law, aimed at strengthening prohibitions on gender discrimination in the payment of wages for "comparable work." As discussed in more detail in previous posts, the revised law will require that employees be paid equally for work involving "substantially similar" skill, effort, and responsibility, accounting for certain mitigating factors. The law will also prohibit employers from requesting or inquiring into the salary history of job applicants and from restricting employee discussions about their own or another employee's wages.

Although the law will not take effect until July 1, 2018, employers can and should act now to begin ensuring compliance with the new law and to ensure they are prepared to defend against an Equal Pay Act suit. For instance:

- Consider how to best determine whether wage inequity currently exists at the company, and whether to perform an audit in conjunction with oversight from counsel. Wage equity audits can take several months, and therefore it is advisable to begin this process sooner rather than later. Once the audit is complete, employers should work with counsel to determine how best to address the results and to determine whether subsequent audits are necessary. The Massachusetts law establishes an affirmative defense for an employer who, within the three years prior to the commencement of an action for equal pay violations, has completed a good faith self-evaluation of its pay practices and can demonstrate that "reasonable progress" has been made towards eliminating wage differentials based on gender for comparable work.

- Review job applications and interview materials to ensure that they do not include questions regarding compensation or benefit history. Employers should also ensure that managers, human resources staff, and other individuals who participate in hiring (including third-party recruiters) are aware of the obligations under the new law and refrain from making any prohibited inquiries of applicants at any stage of

the hiring process.

- Update and re-assess policies or procedures that set salary thresholds for jobs. Employers should also analyze and adjust policies that cover pay practices (including compensation, bonus, and commission policies) to comply with the Act's provisions regarding permissible objective bases for differences in pay (such as seniority and certain types of differentiating details of the job). Employers should also review employee handbooks, policies, and forms in order to remove prohibitions on employee compensation disclosures.

The law remains vague as to what constitutes "comparable work," and how the "substantially similar" standard should be analyzed. That uncertainty likely will not be resolved until the law has been implemented and interpreted by courts. In the interim, we encourage employers to work with counsel to ensure that they are prepared for the implementation of the new law this summer.

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