

Stay Tuned: Massachusetts Legislature Poised to Enact Pay Transparency Requirements

Law and the Workplace on November 13, 2023

Massachusetts is poised to join to the [growing number of states](#) enacting pay transparency laws which, among other things, require employers to disclose minimum and maximum salary ranges for job openings. At present, the Massachusetts House of Representatives and Senate have passed largely similar pay transparency bills, with the expectation that a consolidated bill will eventually be signed into law by Governor Maura Healey. Though some changes are anticipated as the chambers consolidate their overlapping bills, Massachusetts employers can glean some insight into the requirements that will likely become law by examining where the present bills overlap.

Requirement to Post Salary Ranges in Job Postings

As true in other states that have enacted similar laws, the central requirement under both the House ([H.4109](#)) and Senate ([S.2468](#)) bills is that Massachusetts' "covered employers" (the definition of which is discussed below) must disclose the pay range for a particular employment position when posting the availability of that job. Further, covered employers must provide the pay range for a particular job when current employees are offered promotions or transfers to a new position with different job responsibilities. Finally, covered employers must make pay ranges available upon request to current employees or applicants.

The proposed law would define "pay range" as 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." Other states enacting pay transparency laws have similarly imposed this "good faith" requirement on employers. Notably, the current drafts of the law do not appear to include items like bonuses or other incentive type pay within the definition of "pay range."

Covered Employers

Under both bills, the requirements to post salary ranges would only apply to employers that employ twenty-five (25) or more employees in the Commonwealth of Massachusetts. Accordingly, employers that maintain out-of-state headquarters, but employ 25 or more employees in Massachusetts, would nonetheless be subject to this law.

Notably, these requirements also apply to “agents” of covered employers, which likely includes recruiters, placement agencies, and the like.

Anti-Retaliation

The proposed law makes it unlawful for employers to discharge or otherwise retaliate or discriminate against employees and job applicants because of the employee or job applicant’s exercise of their rights under the law. For example, if an employer takes an adverse action against an employee because that employee requested the salary range for a job position, the employer could face liability for retaliation.

Remedies and Enforcement

Under the current bills, the Massachusetts Attorney General would have sole jurisdiction to enforce the law. Employers could face warnings for a first offense under the law, and fines of up to \$500 and \$1,000 for second and third offenses, respectively. Fourth (or further) violations may be subject to fines ranging from \$7,500 to \$25,000. These fines are not subject to trebling under the proposed law. Employees or job applicants, for their part, would not be able to sue or otherwise take action against employers who violate this law – there is no private right of action.

Wage Data Reporting

Aside from the public-facing aspects of the proposed law, each bill also contains requirements regarding wage data reporting – but only for employers with one hundred (100) or more full-time employees in Massachusetts. Under this requirement, employers who are subject to federal EEO-1, EEO-3, EEO-4, and EEO-5 wage data report filing requirements shall submit wage data reports to the Commonwealth.

Takeaways

Though not yet law, Massachusetts employers should be prepared to begin posting salary ranges or hourly wage ranges in their job postings, whether such postings are external, internal, or accomplished through a third party. Such ranges should reflect good faith estimations of what an employer would expect to compensate for the role. It is expected that the law would become effective one year after the Governor's signature. We will continue to post updates with further developments.

[View original.](#)

Related Professionals

- **Mark W. Batten**

Partner