Massachusetts Equal Pay Act Goes Into Effect – What Employers Need to Know...

By Dave Robinson on August 1, 2018

On July 1, 2018 the Massachusetts Equal Pay Act ("MEPA") went into effect, which combats gender-based pay disparities within Massachusetts. The goal of MEPA is to ensure fairness and equity in the workplace while clarifying what constitutes unlawful wage discrimination. With its more liberal application and multiple damages, employers must become aware of the implications of MEPA and how it could affect their pay practices. Indeed, just one day after MEPA went into effect, a flute player in the Boston Symphony Orchestra (BSO) filed suit against the BSO claiming that she is paid $70,000 less than her male counterpart, who plays an oboe. The BSO lawsuit highlights the heightened risk MEPA imposes on employers.

MEPA is different from the federal equal pay law because it broadly defines "comparable work," as work requiring substantially similar skill, effort, responsibility, and working conditions. This term is intended to be broadly read in order to eliminate minor differences, such as job titles or minor duties, which under the prior law likely would have allowed for a pay disparity. Under MEPA many positions once considered different under prior law, would now be considered "comparable."

MEPA only permits differences in compensation for "comparable" positions pursuant to following rationales: (1) a system that bases pay raises 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); (2) a merit system; (3) a system which measures earnings based on quantity or quality of production, sales, or revenue; (4) the geographic location in which a job is performed; (5) education, training or experience, to the extent such factors are reasonably related to the particular job in question; or (6) travel, if the travel is a regular and necessary condition of the particular job. "Systems" must be predetermined and uniformly applied in good faith by management and must be backed up by written documentation (i.e. policies, reviews, production reports, etc.). Unlike federal law, there is no "catchall" provision that would permit differences in pay for something other than gender.

MEPA also prohibits employers from preventing employees from discussing their wages and from questioning prospective employees about their salary or wage history. Salary or wage history is also not a justification for a pay difference, nor can an employer rely upon market forces requiring employers to hire new employees by paying more than existing employees. Accordingly, paying a higher salary to attract employees during times of low unemployment or for positions in high demand will not only cost employers the increased salary for the employees they hire, it will also require them to raise all comparable employees' salaries to the same level, or run the risk of a violating MEPA.

Employees have three years from the date of an alleged violation to bring a claim alleging

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their rights under MEPA have been violated, which occurs each time wages are paid. Additionally, an employer may not retaliate against an employee that files a formal or informal complaint. An employer that is found to have violated MEPA is liable for twice the amount of unpaid wages (the amount of wage disparity), plus attorneys' fees and costs.

MEPA provides a safe harbor for employers who engage in a self-evaluation to determine if improper pay disparities exist. If the assessment is reasonable in detail and scope, and the employer makes reasonable progress towards compliance, the employer may be protected from claims under MEPA for up to three years. Accordingly, it is recommended that employers conduct a self-evaluation as soon as possible to determine if a problem exists.

Please contact an attorney at Ruberto, Israel & Weiner if you have any questions.

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