



**THE MASSACHUSETTS PAY EQUITY ACT**  
Questions & Answers

**What is “pay equity”?**

**Definition:** Pay equity means that employers must use gender-neutral criteria to set wages. This is a way of reducing gender discrimination in the workplace.

**Pay Equity Act.** The [Massachusetts Pay Equity Act](#), which strengthens employees’ right to receive equal pay for comparable work by prohibiting an employer’s use and control of wage information, goes into effect on July 1, 2018. While state and federal laws have long required equal pay regardless of gender for the same job, the Pay Equity Act prevents employers from paying employees different amounts for performing comparable work. The law also establishes Massachusetts as the first state in the country to bar employers from asking prospective employees about their salary history.

**Equal Pay for Comparable Work.** Under the state’s Pay Equity Act, employers cannot pay employees who perform comparable work differently based on their gender.

**What is “comparable work”?**

Comparable work is work that requires substantially similar skills, effort or responsibility and is performed under similar working conditions. In determining comparable work, employers must look at employees’ actual duties, not just their job titles.

**How are “wages” defined under the Pay Equity Act?**

Wages are defined as all forms of remuneration for employment, including benefits and other compensation.

**Exceptions allowing for a difference in payment of wages.** Employers can pay employees differently based on:

- a seniority system, provided that time spent on a pregnancy, parental or family and medical leave shall not reduce seniority
- a merit system
- a system that measures earnings by quantity or quality of production, sales or revenue
- the geographic location where the job is performed
- education, training or experience, if such factors are reasonably related to the job; or
- travel, if it is a regular and necessary condition of the job.

An employer who is paying employees differently for comparable work based on their gender must pay the affected employee the difference in pay. The employer may not reduce the pay of any employee to comply with the law.

As a defense for violating the law, an employer may not rely upon (i) an employee’s previous wage or salary history or (ii) an agreement between an employer and an employee, such as a collective bargaining agreement, to pay less than required under the Pay Equity Act.

Employees have three years from the last payment of wages that violate the law to file a complaint. Each unlawful payment of wages constitutes a new violation. Damages include payment of twice the amount of unpaid wages plus attorney’s fees and costs.

**Pay transparency.** The Pay Equity Act bars employers from:

- requiring that employees, as a condition of employment, refrain from asking about, discussing or disclosing information about their own wages or any other employee's wages. Employers are not obligated to disclose an employee's wages to another employee or third party, however
- asking prospective employees or their current or former employers for their wage or salary history
- requiring that a prospective employee's prior wage or salary history meet certain criteria.

Employers may seek a prospective employee's prior wage or salary history under the following conditions:

- if the prospective employee voluntarily discloses this information, the prospective employer may confirm prior wages or salary
- the prospective employer seeks or confirms a prospective employee's wage or salary history after an offer of employment with compensation has been negotiated, and after the offer has been made to the prospective employee.

Employers may not enter into a contract with employees, such as a collective bargaining agreement, or take any other action to avoid complying with these pay transparency provisions. However, an employer may prohibit a human resources employee, supervisor or any other employee whose job responsibilities require or allow access to other employees' compensation information from disclosing such information without the employee's consent, unless this information is contained in a document defined as a public record under state law.

### *Is there a statute of limitations?*

The statute of limitations and remedies for the pay transparency section are the same as those under the comparable work provisions of the Pay Equity Act.

**No Retaliation for Asserting Pay Equity Rights.** Employers cannot dismiss or retaliate against any employees who:

- oppose an employer's violation of the law
- file, or say they will file, a complaint alleging violation of the law
- testify, or are about to testify, assist or participate in any way in an investigation or proceeding involving violation of the law; or
- disclose their wages or discuss the wages of any other employee(s).

### *Can an employer defend itself?*

An employer that completes a self-evaluation of pay practices in good faith within the previous three years and can show reasonable progress toward correcting any gender-based pay differentials for comparable work can offer this as a defense to an employee complaint under the law.

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