



Meeting New Massachusetts Pay Equity Requirements



Is Your Organization Prepared to Meet New Massachusetts Pay Equity Requirements?

Ensuring your organization is prepared to meet Massachusetts Pay Equity requirements is important from a compliance perspective, but emerging data suggests that addressing this issue in a thoughtful, strategic manner may create a pathway to heightened employee engagement. A recent Gallagher engagement study confirms that while compensation is not a direct driver of engagement, it has a moderating effect — *Powerfully enriching engagement by directly influencing key engagement drivers*. This thrusts pay equity into an incredibly important position; until now, not widely recognized. It shifts the conversation beyond compliance or “It’s the right thing to do”, to using pay equity as a potential trigger enabling engagement to be built more efficiently and powerfully than previously thought. Pay equity can certainly improve an organization’s ability to attract and retain key talent in a competitive labor market, but also have a significant impact on individual and organizational performance.

Massachusetts Pay Equity Law

In 2016, Massachusetts signed into law a bill strengthening protections against gender-based discrimination in the pay provided to employees for “comparable work”. The statute (the “Pay Equity Law”) **becomes effective on July 1, 2018**. Although equal pay is currently required under both federal and Massachusetts law, this new State law establishes a definition for “comparable work” and puts in place a series of employee-friendly restrictions on an employer’s ability to use and control compensation information.

Current Massachusetts legislation prohibits an employer from discriminating, based on gender, in the payment of wages for comparable work, although the meaning of “comparable work” has generally been left open to interpretation. The Pay Equity Law, however, defines “comparable work” as work requiring a substantially similar skill set, effort, and responsibility and which is performed under similar working conditions. Whether work is “comparable” may not be determined by a job title or job description alone.

The new law also expands the concept of wages to include all forms of remuneration for employment, suggesting that it may include benefits and other forms of compensation such as incentive equity and participation in nonqualified deferred compensation plans.

The Pay Equity Law also limits the concept of “comparable work” by outlining that compensation differentials may be permissible if based on:

1. A system rewarding seniority, provided that seniority is not reduced due to pregnancy or protected parental, family, or medical leave;
2. A merit system;
3. A system measuring earnings by quantity or quality of production, sales, or revenue;
4. The geographic location in which the work is performed;
5. Education, training, or experience to the extent reasonably related to the position; or
6. Travel, if regular and necessary for the business.

The Pay Equity Law makes it unlawful to prohibit employees from disclosing their current compensation information or discussing their or another employee’s compensation (though restrictions are permissible on employees whose jobs require or allow access to other employees’ compensation information).

The law will also restrict a prospective employer’s ability to request and use a job applicant’s current and historical compensation information. A prospective employer may not request that either the applicant or a current or prior employer disclose such information and may not require that a job applicant’s compensation history meet certain criteria. A job applicant may, however, voluntarily disclose compensation information, at which point the prospective employer may use the information for further compensation negotiations.

The law also explicitly provides for certain unique defenses for employers faced with pay equity claims. Most notably, if an employer is sued for violating an employee’s pay equity rights under the law, it will have an **affirmative defense to liability if it has — within the prior 3 years and before the action was filed — completed a ‘self-evaluation’ of its pay practices** in good faith, and can demonstrate reasonable progress in reducing pay inequity based on gender.



What Should an Organization Consider Regarding Pay Equity Legislation?

- How are you preparing for the new requirements?
- How confident are you in your organization's pay practices? Do you have the data to prove compliance with the new legislation?
- Are you ensuring pay equity across gender and race?
- What statistical approach are you leveraging to analyze pay equity?
- How can you address pay equity to positively impact employee engagement?

How Gallagher's Compensation Consulting Team Can Help

Gallagher's team of compensation consulting specialists have the right expertise and experience to:

- Mitigate pay equity risks
- Identify current program challenges
- Develop pay equity strategies to improve employee engagement and drive organizational results.

Gallagher's Proactive Approach

Starting with a deep-dive discovery process that takes into account your current compensation program, competitive environment, and Massachusetts State law requirements, we will examine all compensation methods. Once issues are identified, and analysis is complete, we will confirm the challenges and present recommendations designed to support organizational goals.

To get started, contact your Gallagher representative.



 <p>Benefit Administration</p>	 <p>Benefit Advocate Center</p>	 <p>Communication</p>	 <p>Compensation & Benefits Sustainability</p>	 <p>Compliance</p>
 <p>Exchange Solutions</p>	 <p>Executive Benefits</p>	 <p>Health & Welfare</p>	 <p>Healthcare Analytics</p>	 <p>Human Resources & Compensation</p>
 <p>Institutional Investment & Fiduciary Services</p>	 <p>Life/Wholesale</p>	 <p>Multinational Benefits & HR</p>	 <p>National Benchmarking Survey</p>	 <p>Pharmacy Benefit Practice</p>
 <p>Property & Casualty</p>	 <p>Retirement Plan</p>	 <p>Voluntary Benefits</p>	 <p>Wellbeing & Employee Engagement</p>	 <p>Workforce Evaluation</p>

Garry Straker
Area Vice President
Gallagher Benefit Services, Inc.
100 Northfield Drive, 2nd Floor
Windsor, CT 06095
garry_straker@ajg.com
Tel. 860 285 1678
www.ajg.com