



Meeting New Massachusetts Pay Equity Requirements

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

According to published highlights from the CUPA-HR 2017 higher education salary reports, minority and gender pay gaps exist in higher education. Among key findings recently announced:

A gender pay gap exists for higher education professionals. This pay gap increases with age, such that women professionals earn about \$10,000 less than men. Women receive equitable pay only in the areas of information technology and student affairs.

Among staff employees, there is a pay gap between minorities and White staff for all but office/clerical positions. This pay gap is worst among service/maintenance staff, where racial/ethnic minorities make only 90 cents on the dollar compared to White staff. Asians are an exception, being paid at or above equity for all but service/maintenance positions.

Women are paid less than men in all staff areas except office/clerical work. The largest pay gap is in service/maintenance, where women are paid only 86 cents on the dollar compared to men in service/maintenance jobs.



This year is the first year that CUPA-HR has collected individual incumbent salary data along with key demographic variables that lead to these findings. Demographic data includes, gender, race/ethnicity, birth year (estimated age), and years in position for all the positions in the survey.

With expanding pay equity legislation at the Federal and State level, and increased awareness and focus on this issue, reviewing your pay practices and assessing your institutional risk is becoming increasingly important. Beyond ensuring **competitive pay programs that attract, retain and engage key faculty and staff**, it is now even more important to an institution's **risk exposure** – both from a competitive talent loss perspective, as well as fines and potential lawsuits associated with pay equity noncompliance. This can have a **big impact** on your institution's bottom-line.

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 Institution Consider Regarding Pay Equity Legislation?

- How are you preparing for the new requirements?
- How confident are you in your institution'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 Gallagher's Compensation Consulting Team Can Help

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

- Mitigate pay equity risks
- Identify current program challenges
- Defend pay equity strategies

Gallagher's Proactive Approach

Starting with a deep-dive discovery process that takes into account your current compensation program as well as Massachusetts State law requirements, we will examine all compensation methods before performing an analysis. Once issues are identified, we will review the challenges and present recommendations for long-term sustainability.

To get started, contact your Gallagher representative.

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