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## For Your Information®

### **New pay transparency law on tap for Massachusetts employers**

Massachusetts is poised to join the growing number of states aiming to promote pay equity through increased pay transparency. If, as expected, the Governor signs recently passed legislation into law, employers with 25 or more Massachusetts employees will be required to disclose pay ranges on job postings, and to provide pay range information to current employees. Employers with 100 or more Massachusetts employees will have to submit wage data to the Commonwealth annually.

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#### Background

Both the Massachusetts House and Senate have recently passed pay transparency bills. While House Bill [4109](#), *An Act Relative to Salary Transparency*, and Senate Bill [2468](#) are similar, there are some differences that legislators must reconcile before a consolidated bill is sent to Governor Healey. If, as expected, the legislation is signed, the law would take effect one year after enactment.

#### New obligations for Massachusetts employers

Even as Massachusetts employers await the consolidated bill, there are requirements common to both chamber's bills that will likely become law.

#### Covered employers

Both bills would apply the new posting requirements to employers with 25 or more employees in the Commonwealth of Massachusetts as well as to "agents" of covered employers (e.g., recruiters and placement agencies).

### Pay range disclosures

Both the House and Senate bills require covered employers to disclose pay ranges on job postings and to provide pay ranges to current employees who are offered promotions or transfers to a new position. Covered employers must also make pay ranges for a particular position available to current employees in the position or to applicants for the position upon request.

Both bills 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.” Unlike earlier proposals, neither bill would require disclosure of bonuses, other incentive pay or benefits.

### Anti-retaliation

Both bills contain broad anti-retaliation provisions making it unlawful for employers to discharge or otherwise retaliate or discriminate against employees and job applicants because they exercise their rights under the law.

### Wage data reporting

In addition to pay range disclosures, both bills require annual wage data reporting — but only for employers with 100 or more full-time employees in Massachusetts. Employers who are subject to federal EEO-1 reporting requirements will have to submit their wage data reports to the Secretary of the Commonwealth every year as a supplement to their annual corporate filings. The information will be provided to the Massachusetts Department of Labor to publish aggregated data on its website.

Both bills would also require covered employers that are subject to federal EEO-3 (unions), EEO-4 (state and local governments) and EEO-5 (elementary and secondary school systems) reporting requirements to submit similar information every other year.

### Enforcement

Neither bill provides a private right of action. However, both bills authorize the Attorney General’s Office to seek declaratory or injunctive relief and impose fines against an employer for failing to provide required pay ranges or to submit required EEO reports. While first violations of the law would be subject only to a warning, fines for subsequent violations would range from \$500 to \$25,000 depending on the violation. Fortunately for employers, the bills expressly provide that violations would not be subject to treble damages under the Massachusetts Wage Act.

### In closing

In light of this legislation, employers with employees in Massachusetts should begin to develop a strategy to comply with the expected disclosure and reporting requirements. In particular, protocols followed by their hiring managers and any third parties used in the recruiting process should be assessed to determine whether changes may be needed.

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