

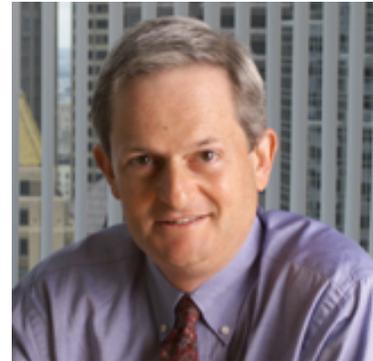


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## 6 Steps To Complying With New Mass. Labor Laws

By **Paul Holtzman** January 22, 2018, 11:39 AM EST

In light of the conversation currently unfolding nationwide regarding workplace climate and professional conduct, employers large and small should be paying close attention to what constitutes appropriate behavior in the modern workplace. The recent flood of sexual harassment complaints (both past and current) should prompt both human resources and company leadership to review and seek expert guidance on policies, training and compliance.



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In addition, Massachusetts employers will need to update their policies to incorporate new statutes addressing gender pay equity and pregnant workers. Above all, it is incumbent upon human resources and senior leadership to ensure that all guidelines, policies and procedures — especially those that may be changing — are not only established and documented, but also that they are clearly communicated to and understood by all employees throughout the organization.

### Pay Equity

"An Act to Establish Pay Equity" will take effect on July 1, 2018. It is one of the strongest state laws in the nation focused on cultivating equal pay for comparable work and combating discrimination based on gender, with a three-year statute of limitations.

The act prohibits discrimination against employees based on gender in the payment of wages, benefits or other compensation for comparable work. "Comparable work" is defined as work that is substantially similar and requires substantially similar skill, effort and responsibility, and is performed under similar working conditions. The job title or description alone are no longer sufficient to determine comparability. The act provides an exception to the equal pay requirement if there is a legitimate business reason to pay a man more than a woman, such as a bona fide seniority or merit system, a system that measures productivity, geographic location, education, training, experience or travel.

Employers may no longer inquire about an applicant's salary or benefit history before extending an employment offer that contains compensation terms or prohibit employees from talking to their co-workers about wages or benefits, and must pay women based on competitive market rates and not salary history. Significantly, employees will now be able to file a claim directly in court; previously, an initial claim of discrimination had to go through the Massachusetts Commission against Discrimination (MCAD) before being filed in court.

Employers who perform a good faith self-evaluation of their pay practices at least once every three years may be able to assert an affirmative defense to claims of pay inequality, provided that the evaluation is reasonable in detail and scope.

## **Pregnant Workers Fairness Act**

Another law going into effect in Massachusetts in 2018 is the Massachusetts Pregnant Workers Fairness Act (MPWFA). This law will take effect on April 1, 2018, and will amend the current Massachusetts discrimination law to specifically include “pregnancy or a condition related to pregnancy, including, but not limited to, lactation, or the need to express breast milk for a nursing child” as a protected class. The new law goes beyond the existing protections in the Federal Pregnancy Discrimination Act and the Americans with Disabilities Act, not only prohibiting employers from discriminating against, failing to hire or firing an employee based on pregnancy or a pregnancy-related condition, but also mandating reasonable workplace accommodations for pregnant women and any conditions relating to the pregnancy.

Reasonable accommodations for pregnant employees or employees with a pregnancy-related condition, which no longer require documentation, could include more frequent or longer unpaid breaks, paid or unpaid time off to recover from childbirth, modified equipment or seating, job restructuring, private nonbathroom space to express breast milk, or assistance with manual labor. Employers must also ensure that employees will have access to private, nonbathroom space for nursing or expressing breast milk. If an employee requests an accommodation that would require significant difficulty or expense for the employer, it may be deemed an “undue hardship” and the MPWFA may not require the employer to provide that accommodation. However, there must be a good-faith effort to engage in an interactive process with an employee who requests an accommodation that would allow that employee to perform the essential functions of her position. Employees may not be forced to take a leave of absence if a reasonable accommodation would allow the employee to continue to perform the essential functions of her job.

The regulations within the MPWFA require updated written notice to employees, and revised handbooks. In addition, ongoing documentation of interactions with employees requesting accommodations for disabilities, as well as timely tracking of such interactions, remain best practices.

## **Action Steps**

Based on both new laws and the current environment, counsel and the human resources teams should collaborate on the following key action steps:

- Review and update (as needed) sexual harassment policies with an added level of scrutiny, including definition of sexual harassment, process for reporting and addressing grievances, and third-party resources available to employees.
- Assess existing sexual harassment training programs and determine if they are effective or if additional training is necessary to ensure genuine steps are being taken to establish a healthy, safe and legally compliant working environment.
- Update policies regarding salaries; consider conducting a company-wide salary review and benchmarking against industry standards.
- Revise the company handbook consistent with "An Act to Establish Pay Equity" (eliminating provisions barring discussion of pay or benefits with co-workers), and ensure that the act's existence and implications are thoroughly understood by managers and supervisors, with particular focus on prohibited questions during interviews.

- Notify employees about the MPWFA and update company handbooks to include consistent language. More specifically, employers must provide written notice to all employees about their right to be free from discrimination under the amended anti-discrimination statute no later than the effective date.
- Ensure that leadership commits to responding to every allegation of violation or impropriety, and never overlooks a complaint. Especially in this charged atmosphere, employers will face heightened scrutiny regarding how accusations of varying natures are handled. At times, it can even be wise to bring in outside counsel to conduct an objective audit of the organization's policies and procedures — or an investigation of a substantial complaint, or one involving a high-level employee. This approach may be particularly prudent if your organization does not have experience in handling claims of sexual harassment, discrimination, pregnancy accommodations and related issues.

If you are not already updating your company handbook annually, now may be a good time to conduct a comprehensive review of all the policies and determine if additional changes need to be made to be compliant with the law.

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