

**KROKIDAS & BLUESTEIN**  
**ATTORNEYS**

**CLIENT ALERT**

**MASSACHUSETTS ENACTS PAY EQUITY LAW  
WITH GROUNDBREAKING PROVISIONS**

Governor Baker has signed into law “An Act to Establish Pay Equity” which is designed to ensure equal pay for comparable work by men and women. The law, effective July 1, 2018, provides for private and public enforcement, prohibits an employer from requesting salary history information from job applicants, and protects employees who discuss or make inquiries about the wages of co-workers.

The following are some highlights of the new law:

The law prohibits discriminating against employees on the basis of gender in the payment of wages, benefits or other compensation, for comparable work. “Comparable work” is defined as work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions; provided that a job title or job description alone shall not determine comparability. The law prohibits such discrimination unless it is based upon legitimate factors such as seniority, a bona fide merit system (such as one which measures earnings by quantity or quality of production or sales), or education, training or experience to the extent that such factors are reasonably related to the job.

In addition, the law prohibits an employer from screening job applicants based on the history of their wages, benefits or other compensation, and bars employers from seeking such information except after a formal offer of employment and written consent of the prospective employee. This first-in-the-nation provision is designed to avoid perpetuation of historically lower salaries for women in the workforce. In an effort to facilitate discovery of gender-based disparities, the law also prohibits an employer from mandating that employees not discuss or compare their wages, benefits or other compensation.

**RULES FOR ENFORCEMENT AND AFFIRMATIVE DEFENSE FOR SELF-EVALUATION**

Unlike claims under Massachusetts General Laws Chapter 151B for gender discrimination in employment, claims under the new law may be asserted directly in court without filing an initial complaint with the Massachusetts Commission Against Discrimination (MCAD). Successful

plaintiffs can recover double their proven damages as well as attorneys' fees and costs. In addition, the new law authorizes the Attorney General to bring lawsuits on behalf of the Commonwealth.

Employers are required to post a notice of employees' rights under the new law. A sample posting is expected from the Attorney General's Office.

Notably, an affirmative defense is available to counter claims under the new law if the employer has within the previous three years completed a self-evaluation of its pay practices, and can demonstrate that reasonable progress has been made towards eliminating gender-based compensation differentials for comparable work.

#### IMMEDIATE STEPS

Employers should review their policies and practices to ensure compliance with the new law, including any application forms or interview protocols calling for salary history, or policies prohibiting discussions of wage information. Consideration should also be given to conducting a self-evaluation to address any gender disparities and to immunize the organization against claims. Finally, employers should remember to supplement their current employment law poster with information about the new law before July 1, 2018.

If you have any questions or if you would like assistance with reviewing your policies to ensure compliance with the new law, or conducting a self-evaluation, please contact Attorney Paul Holtzman ([pholtzman@kb-law.com](mailto:pholtzman@kb-law.com)) or Attorney Jill Brenner Meixel at ([jmeixel@kb-law.com](mailto:jmeixel@kb-law.com)).