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Client Alert: Massachusetts Employers to Be Prohibited From Obtaining Applicants' Prior Pay History – Will Other States Follow?

Requiring a job applicant to provide his or her salary history, or obtaining such information directly from a previous employer prior to extending a job offer, is a common, if not universal practice for employers.

Beginning in July 2018, it will be unlawful for employers in Massachusetts to engage in such practices. On Monday, August 1, 2016, Massachusetts Governor Charlie Baker signed the new law, which is the most recent example of a growing number of federal and state laws aimed at pay disparity between men and women. The new law, the first of its kind, makes it unlawful for an employer to:

The law also prohibits employers from obtaining salary history information from an applicant's former employer prior to extending an employment offer to the applicant. There are a number of other significant provisions of the new law, such as a prohibition of policies or practices that prevent employees from discussing their wages with other employees or third parties (a practice the National Labor Relations Board has deemed to violate federal law for some time), a clarification of certain aspects of the statute's definition of "comparable work," and an expansion of the time limits for bringing a claim under the law from 1 year to 3 years. The law goes into effect on July 1, 2018.



Many are predicting that the Massachusetts law is a portent of things to come and that other states are likely to follow suit with similar legislation aimed at decreasing the pay gap between men and women. At the federal level, while the Paycheck Fairness Act appears effectively stalled in a gridlocked Congress, the Equal Employment Opportunity Commission (EEOC) is sharply focused on the issue of pay discrimination and is currently considering a proposal to expand federal reporting regulations to require that employers include pay data on the EEO-1 Report. Similarly, the Office of Federal Contract Compliance Programs (OFCCP) has publicly announced that it will continue to target pay discrimination in its compliance reviews of federal contractors and subcontractors.

For now, employers who do business in Massachusetts must familiarize themselves with the new law's requirements and adjust their hiring practices accordingly prior to July 1, 2018. On a broader scale, employers should anticipate further development and regulation in the area of pay discrimination generally (not only gender-based disparity), and include critical analysis of their compensation structure and practices within their short- and long-term planning.