Employment Law Alert: National Equal Pay Day

Equal Pay Day in Massachusetts: Are you in compliance?

April 02, 2019

April 2, 2019, is **National Equal Pay Day** – a date designated by the National Committee on Pay Equity to highlight inequities in wages between men and women. Equal Pay Day marks how far into the next calendar year the average American woman would have to work in order to make as much as the average American man made in the preceding year.

With the recent passage of the Massachusetts Equal Pay Law, Equal Pay Day also serves as a reminder to all Massachusetts employers that they have specific legal obligations to examine, identify, and eliminate wage gaps among their male and female employees.

A summary of those obligations is as follows.

Overview of The Equal Pay Law

Effective as of July 2018, the Massachusetts Equal Pay Law requires Massachusetts employers to pay the same compensation to men and women performing ***"comparable"* work**, with some very ***limited exceptions***.
The Equal Pay Law is a strict liability statute. An employer violates the Equal Pay Law if it compensates comparable male and female employees differently, regardless of if such differences are the result of honest mistake.

As discussed below, the Equal Pay Law contains a complex regulatory structure that contains severe penalties for violations.

What Counts as Compensation?

Under the Equal Pay Law, compensation is not limited to just hourly pay or salary. The statute expands the concept of wages to include benefits, bonuses, and other forms of compensation such as incentive equity and participation in nonqualified deferred compensation plans.

What is the definition of "comparable work"?

The Equal Pay Law defines "comparable work" as work "that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions."

Whether work is "comparable" may not be determined by a job title or job description alone.

What are the Limited Exceptions?

Pay differences between comparable male and female employees are permitted under the Equal Pay Law only if such pay differences can be attributed to one or more of the following six "permissible pay variations":

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.

Are There Any Other Restrictions On Employers?

The Equal Pay Law also adds several key protections for employees and job applicants:

- Employers may not prohibit employees from disclosing or discussing their wages. Employers may not seek the salary or wage history of any prospective employee before making an offer of employment that includes compensation, and may not require that a prospective employee's wage or salary history meet certain criteria.
- Employers may not retaliate against any employee who exercises his or her rights under the law.

What Are The Penalties For Violations And What Are The Defenses?

An employer that violates the Equal Pay Law will generally be liable for twice the amount of the unpaid wages owed to the affected employee(s) – the differential between the employee's wages and the wages paid to an employee of a different gender performing comparable work – plus reasonable attorneys' fees and costs.

However, the law provides a ***complete defense*** for any employer that, within the previous three years and before an action is filed against it, has conducted a good faith, reasonable self-evaluation of its pay practices. To be eligible for this affirmative defense, the self-evaluation must be reasonable in detail and scope and the employer must also show reasonable progress towards eliminating any impermissible gender-based wage differentials that its self-evaluation reveals.

An employee has three years to make a claim under the law – but keep in mind that a new three-year period begins every time every time a paycheck is issued in the disparate wage amount, or whenever a discriminatory pay decision is made.

Morse's Employment Practice Group regularly advises clients with respect to the Massachusetts Pay Equity Law, including helping clients conduct pay equity "self-evaluations."

For more information, please contact **Matt Mitchell**.