

Through the Looking-glass: Massachusetts Adds a New Tint to Pay Transparency Laws

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The wave of state laws requiring employers to transparently disclose salaries, hourly rates, and benefits for the world to see—a policy aimed at putting more information (read, power) in the hands of workers—now continues in Massachusetts, which has added its own Yankee twist to its [new pay transparency law](#).

Since [Colorado](#) started the proverbial ball rolling in 2019, nearly half of U.S. states have active or pending pay disclosure laws on the books. In joining this effort, the Massachusetts law requires employers with 25 or more employees to disclose pay ranges to both prospective and current employees upon request. The law also requires a disclosure of this information to employees who are offered promotions, transfers, or laterals to new positions with differing job responsibilities.

Massachusetts' recent legislative efforts to codify pay transparency were recently signed into law on July 31 by Governor Maura Healey. Demarcated as H.4890, the law is set to take effect on July 31, 2025. In keeping with our previous observations ([here](#) and [here](#)), that employers should expect to see a continuing push towards removing a significant portion of the guesswork from the employment application process for its citizens, Massachusetts is the most recent state to join in the chorus.

The Massachusetts law generally works like other state pay transparency laws. As an added wrinkle, however—and fairly unique among such laws—the new law is set to be enforced *in tandem* with Massachusetts' exacting equal pay law.

[The oldest of its kind](#) in the nation, Massachusetts' equal pay law is one of the strictest on the books because it eliminates a key catch-all defense known as the “factor other than sex” test. Under the Federal Equal Pay Act—and many state corollaries—employers may escape liability if they can demonstrate that a pay differential between colleagues of the opposite sex is justified by seniority, merit, production output, or “any other factor other than sex.” Given its status as a catch-all protection and the relatively vague nature of the definition, the “any other factor other than sex” defense has divided federal circuit courts on matters of interpretation and enforcement. In an effort to avoid this morass, the Massachusetts equal pay law simply eliminates that defense and requires an employer to prove—if a disparity does exist—that it be explainable by factors including seniority, production, education or experience, merit, travel obligations or location.

From an employer and management perspective, the new equal pay law requires a slight change in recruitment strategy. Given that the stated goals of the new transparency laws are to provide applicants with more information during the search process, employers must be mindful of keeping compensation competitive. By adopting a proactive approach with these requirements in mind, talent recruitment professionals can now look at the position first in a holistic manner and work to

match talented applicants accordingly.

One key distinction worth noting is that the new Massachusetts law does not require disclosure of benefit information beyond merely a salary band. Certain states have gone above and beyond to require disclosures of all position incentives such as bonuses, stock options, profit-sharing opportunities, and commissions. By limiting such disclosures, Massachusetts has not entirely lifted the veil on all recruitment efforts.

Employers who violate the new requirements are subject to progressive penalties. A first offense merits a warning, with additional offenses carrying a fine of up to \$500, \$1,000, and for a fourth offense and beyond, enforcement actions brought under Massachusetts General Laws, chapter 149, section 27C.

The Takeaway

While all state transparency laws work in broadly similar ways, they are all different: some require notice upon request, others (most of them) require notice without request, and many differ on what must be disclosed. You can thank our system of federalism for this, but that creates a familiar situation in which an employer operating in multiple states can't easily fashion a one-size-fits-all approach to compliance.

So what to do? First, be familiar with the specific disclosure requirements of each statute. Next, figure out whether you want to take a very tailored approach, using different employment practices in each state, or whether instead you want to comply with the "highest common denominator"—that is, the law that puts the biggest burden on you—as a way of ensuring compliance with all the relevant laws and reducing the chances of making a mistake in a specific state. And finally, you may want to get advice from your employment law counsel. None of the laws in themselves are hard to understand. Understanding how to comply with all of them simultaneously, however, can be far trickier.

If you have questions about pay equity and transparency matters, please reach out to a member of Kelley Drye's [labor and employment team](#).