

State Rules Register Alert

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Massachusetts Pay Equity Act - Senate Bill No. 2119

As you have probably heard in the news, Massachusetts is the first state to enact a law prohibiting an employer from obtaining past salary information. The stated goal of the Act is to help obtain male/female income parity.

The Act includes the standard: do not discriminate on the basis of gender in regard to income, benefits or other compensation. Equal pay has been a recent political topic, even though the Equal Pay Act on the federal level was passed in 1963.

The [Massachusetts Act](#), repeats the Federal Equal Pay Act Provisions and adds prohibitions at chapter 149, §105A(c) prohibiting certain inquiries of the applicant and past employers regarding: 1) past wage/salary history; 2) past benefits; 3) any other past component of compensation. Oddly, such inquiry can be made with the written consent of the applicant after an offer of employment has been made. This seems a little late in the hiring process to use the information because pay and benefits are commonly a part of the traditional offer of employment. To obtain the information after the offer would seem to "open a can of worms". It is unlikely an employer will do that. However, if a CRA receives a request to obtain this information, it should ask for the consent.

As for CRAs, employment verification services for Massachusetts employment must now avoid asking about past pay, benefits or other elements of compensation with prior employers. It does not mean that a Massachusetts employer could not be asked by a CRA for this information for a job that is outside of Massachusetts with a non-Massachusetts headquartered company.

This Act becomes effective January 1, 2018.

Editorial Note: For applicants trying to make a lateral move to improve their employment situation, this law seems to create a problem for both the applicant and the potential employer. The applicant typically wants to earn more than he or she is currently receiving at their current job. How does the applicant accurately communicate what they need to make the move? If the applicant says they need a least a \$120,000 is that not in some way indicating the past salary range? In my experience the applicant may say that they need an increase in "X" dollars. Again, is this communicating past or current income? The employer wants to provide an adequate incentive to get the applicant to come on board. It wants its offer to be attractive, but not crazy. We will have to wait and see if the law has unintended consequences.