

CLIENT ALERT: Massachusetts Legislature Passes Pay Transparency Bill

On July 24, 2024, the Massachusetts House of Representatives and Senate passed legislation entitled An Act Relative to Salary Range Transparency, [H4890](#). The proposed law, which is expected to be signed by Governor Maura Healey in the near future, requires covered employers to provide salary ranges and wage data reporting as part of the Commonwealth's continuing efforts to support pay equity.

The newly passed law requires employers with over 25 employees in the Commonwealth to disclose pay range information on job postings intended to recruit job applicants for specific positions, including postings made by third parties (such as recruiters) on an employer's behalf. Covered employers must also provide pay range information for a given position to a current employee who is offered a promotion or transfer to a new position with different job responsibilities, and to employees who hold or are applying for the position upon the employee's request. "Pay range" is defined as the annual salary or hourly wage range the employer reasonably and in good faith expects to pay for the position at the time of posting.

The bill also requires private employers who employ more than 100 employees in Massachusetts at any point in the prior calendar year and are subject to the federal filing requirements of a wage data report to submit copies of their EEO data reports to the Commonwealth on an annual basis. The submitted reports will include workforce demographic and pay information categorized by race, ethnicity, sex, and job category. Labor unions, state and local governments, and elementary and secondary school employers will be required to submit similar workforce and pay data every other year. The state will publish aggregate wage and workforce data reports by industry. The underlying reports submitted by employers will not be considered "public records" subject to disclosure under the Massachusetts Public Records Law; however, the aggregate wage and workforce reports published by the Executive Office of Labor and Workforce Development will be public records.

The pay transparency bill includes anti-retaliation protections, and makes it unlawful for a covered employer to retaliate against any employee or applicant because that person has taken any action to enforce their rights with respect to pay range disclosure or participated in an enforcement proceeding. Under the proposed law the Massachusetts Attorney General has exclusive enforcement jurisdiction; the bill does not provide for a private right of action. The bill also lists potential penalties for employers who fail to comply. For a first violation of the new law, employers will receive a warning but additional offenses are punishable by fines of up to \$500 (for a second offense) and increasing to fines ranging from a maximum of \$7,500 to \$25,000 per violation (for fourth and subsequent violations, depending on the specifics of the situation). Violations of the new proposed law do not, unlike some other Massachusetts wage laws, give rise to treble damages.

The salary transparency law joins the Commonwealth's existing prohibitions on wage secrecy and the use of salary history as part of an ongoing effort towards eliminating wage discrimination and

narrowing the gender-based wage gap. Massachusetts is far from alone in these efforts, as multiple states have in place some form of salary range disclosure requirement and others appear poised to follow the trend. Employers should consult their MBJ attorney with questions about compliance and strategies for lawful recruitment and hiring practices.

Maura D. McLaughlin is a partner with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666 or at mmclaughlin@morganbrown.com. This alert was prepared with the assistance of Northeastern University School of Law student, Charlotte Seaman. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on August 1, 2024.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.