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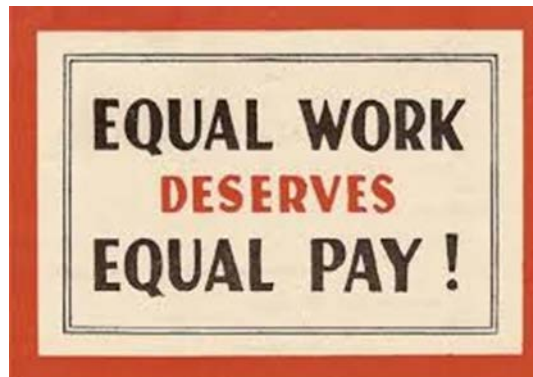
Pay Equity Law



Federal Equal Pay Act

Employers are required to provide **equal pay** for men and women for jobs within the same establishment that require:

- **equal** skill, effort and responsibility, and
- are performed under similar working conditions



Federal Equal Pay Act

- Four exceptions:
 - seniority system
 - merit system
 - system that measures earnings by quantity or quality of production
 - differential based on any other factor other than sex



Pay Equity Law in New England States

- Maine
- New Hampshire
- Massachusetts
- Connecticut
- Rhode Island
- Vermont





ME Pay Equity Law

Equal Pay for
Comparable
Work

“Pay Secrecy”
Policies
Prohibited

Imposes Rules
for Use of Salary
History in Hiring

Self-Audit

Comparable Work

- Equal pay for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility
- Permissible differentials based on
 - Established seniority systems
 - Merit increase systems
 - Difference in the shift or time of the day worked
- No catch-all “factor other than sex”
 - Much more restrictive than the federal Equal Pay law
 - Harder to justify a pay disparity in Maine because the permissible factors are more limited than the factors available under federal law



No Pay Secrecy

- May not prohibit an employee from disclosing the employee's own wages or from inquiring about or disclosing another employee's wages if the purpose of the disclosure or inquiry is to enforce the rights granted by the pay equity law

Salary History Ban

- Effective **September 17, 2019**
- Employers may not use or inquire about the past salary history of an applicant from the applicant or from a current or former employer of the applicant
- Unlawful inquires about past salary history will be considered evidence of unlawful employment discrimination



Exception

- It is permissible to ask about salary history:
 - After an offer of employment **that includes all terms of compensation** has already been made to the applicant
 - If required by any federal or state law to disclose or verify compensation history for employment purposes
 - If **voluntarily** disclosed by the applicant, **without prompting** by the employer
 - The employer may seek to confirm or permit the applicant to confirm such information prior to an offer of employment
- Salary expectations?
 - The law is silent on this issue



NH Pay Equity Law

Equal pay for
equal work

“Pay secrecy”
policies
prohibited

Equal Pay for Equal Work

- Equal pay for equal work that
 - Requires equal skill, effort, and responsibility
 - Is performed under similar working conditions
- Pay disparity is permitted if based on:
 - A seniority system
 - A merit or performance-based system
 - A system which measures earnings by quantity or quality of production
 - Expertise
 - Shift differentials
 - A demonstrable factor other than sex, such as education, training, or experience

Pay Secrecy Prohibited

- Unlawful to require the following as a condition of employment: (a) that an employee refrain from disclosing the amount of his or her wages; or (b) that an employee sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages, salary, or paid benefit



MA Pay Equity Law

Equal Pay for
Comparable
Work

“Pay Secrecy”
Policies
Prohibited

Imposes Rules
for Use of Salary
History in Hiring

Affirmative
Defense for
Self-Audit

Makes Litigation
Easier

Equal Pay for Comparable Work

- “Comparable work” is work that is substantially similar
 - Requires “substantially similar skill, effort and responsibility”
 - “Is performed under similar working conditions”
 - Job title or job description will not determine comparability



Permissible Pay Disparties

Pay disparity is permitted if based on:

- Seniority
- Merit system
- System based on quality or quantity of production or sales
- Geographic location
- Education, training or experience
- Travel, if a regular and necessary condition of job



If such factors are reasonably related to the job.

Pay Secrecy Prohibited

- Unlawful to require, as a condition of employment, that an employee refrain from inquiring about, discussing, or disclosing information about either the employee's own wages, including benefits or other compensation, or about any other employee's wages



Salary History Ban

- Unlawful to seek the wage or salary history of a prospective employee from the prospective employee or a current or former employer or to require that a prospective employee's prior wage or salary history meet certain criteria
- Exception:
 - If a prospective employee has voluntarily disclosed salary history information, a prospective employer may confirm prior wages or salary or permit a prospective employee to confirm prior wages or salary
 - A prospective employer may seek or confirm a prospective employee's wage or salary history after an offer of employment with compensation has been made
- An employee's previous wage or salary history shall not be a defense to an action

Connecticut

- Equal pay for equal work
- Permissible pay disparities
 - A seniority system
 - A merit system
 - A system which measures earnings by quantity or quality of production; or
 - A differential system based upon a bona fide factor other than sex, such as education, training, or experience
- Pay secrecy prohibited
 - Employers can't prohibit employees from
 - disclosing or discussing the employee's own wages or the wages of another employee that have been voluntarily disclosed by such other employee
 - Inquiring about the wages of another employee
 - Employers can't require an employee to sign a waiver that denies the employee's right: to disclose or discuss the employee's or other employee's wages; or to inquire about the wages of another employee
- Generally prohibits inquiring into salary history
- The law does not address pay equity audit

Rhode Island

- Equal pay for equal work
- Permissible pay disparities
 - Seniority, experience, training, skill, or ability
 - Duties and services performed, either regularly or occasionally
 - The shift or time of day worked
 - Availability for other operations
 - Any other reasonable differentiation except difference in sex
- The law does not address pay secrecy, salary history, or pay equity audit

Vermont

- Equal pay for equal work that:
 - Requires equal skill, effort, and responsibility
 - Is performed under similar working conditions
- Permissible pay disparities
 - A seniority system
 - A merit system
 - A system in which earnings are based on quantity or quality of production
 - A bona fide factor other than sex
- Prohibits pay secrecy
 - Employers can't prohibit employees from disclosing the employee's wages or inquiring about the wages of other employees
 - Employers can't require employees to sign a waiver that denies the employee's right to disclose the employee's wages or inquire about the wages of other employees
- Generally prohibits inquiring into salary history

Pay Equity Self-Audit



Basic Steps in Self-Audit

Conduct under attorney-client privilege

Step 1: Gather relevant information

Step 2: Identify comparable jobs

Step 3: Calculate whether men and women are paid equally

Step 4: Assess whether differences in pay are justified under the law

Step 5: Remediate any gender-based pay differentials

Step 6: Adjust pay practices

Step 1: Gather Relevant Information

- Gather data and other information necessary to performing a thorough self-evaluation:
 - Most of the information is probably included in HRIS

Step 2: Identify Comparable Jobs (ME and MA)

- Create job groupings based on the skill, effort, and responsibility required to perform the job
- Also consider working conditions
- While job titles and descriptions may be useful, they alone should not determine comparability
- Don't assume that jobs in different business units or departments are not comparable unless they in fact require different skill, effort, and responsibility

Step 3: Calculate Whether Men and Women Are Paid Equally

- Assess any pay disparities between male and female employees
- Within each comparable job grouping
- Look for outliers



When Calculating Wages

- Remember to include all forms of remuneration for employment, including
 - All forms of incentive pay (e.g., commissions, bonuses, profit sharing, other production incentives)
 - Deferred compensation
 - Any specific financial reward
- Whether paid directly to the employee or to a third-party on the employer's behalf (e.g., contribution to retirement plan)

Options

- Employers with small, clearly defined groupings of comparable jobs and relatively simple pay structure
 - Compare the average wages earned by men and women in comparable jobs
- When the number of employees in a particular grouping of comparable jobs exceeds 30 or the pay structure is complex
 - Recommend a statistical analysis (though not required by the law)
- Conduct one-to-one comparison between male and female employees within the same comparable job grouping

Step 4: Assess Whether Differences in Pay are Justified Under the Law

- If a pay disparity exists, determine whether the disparity is justified by legitimate factor unrelated to gender.
 - Know your state law!



Are These Disparities Justified?

ABC company has offices in ME and MA. Susan who works in ME is paid less than Jim who works in MA.

A bookkeeping position requires an Associate's degree. Joe is paid more because he has a Master's degree while Pam has an Associate's degree.

Step 5: Remediate Any Gender-Based Pay Differentials

- Adjustment in pay for some or all employees within a comparable job group
- Develop and implement a remedial plan as soon as practicable upon completion of the self-audit.

Step 6: Adjust Pay Practices

- Review current pay systems and determine the reason(s) for gender-based pay differentials
 - Current compensation structure
 - System used to evaluate/score jobs to determine how jobs are grouped from a pay perspective
 - Process by which salaries/pay rates are established when hiring, including the role of skill, experience, education, geography, market, and negotiation in establishing starting pay
 - Materials related to the performance evaluation system and process used to determine bonuses, merit increases, and promotions; supervisor discretion

Adjust Pay Practices

- Take steps to prevent disparities in the future, including changes to policies and practices
- Consider implementing objective standards for setting starting salaries or hourly rates and for applying raises and other adjustments
- Consider making changes to job titles, descriptions, codes/bands/grades, etc. to better align job groupings
- Consider conducting self-evaluation on a regular basis (e.g., annually, but at least every three years)

Action Items

- Check job descriptions
 - Do they support the required skill, effort, responsibility
- Document basis for pay determinations
- Maintain records to support pay determinations
- Consider impact of negotiation on starting salaries and signing bonuses
- Does your merit system help or hurt you?

Pay Secrecy Action Items

- Ensure employee handbooks, policies, and other relevant documents do not prohibit employees from disclosing or discussing their own or other employees' salary information.
- Definition of confidential information should not include employee salary
 - Confidentiality policy
 - Non-disclosure agreement
 - Offer letters or employment agreements
- Bonus plan should not prohibit discussion of bonus
- Check other wage and hour policies
- Train managers!



Salary History Action Items

- Check your application
 - Delete any questions regarding current or past salary
 - Probably permissible to ask for “Salary Expectations” or “Desired Salary”
 - Include notice that applicants are not required to provide salary history under MA law but may voluntarily disclose salary history



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