

SENATE No. 2119

Senate, January 21, 2016 -- Text of the Senate Bill to establish pay equity (Senate, No. 2119)
(being the text of Senate, No. 2107, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to establish pay equity.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 149 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out the definition of “Woman”.

3 SECTION 2. Said chapter 149 is hereby amended by striking out section 105A, as so
4 appearing, and inserting in place thereof the following section:-

5 Section 105A. (a) As used in this section, the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Comparable work”, shall solely mean work that is substantially similar in that it requires
8 substantially similar skill, effort and responsibility and is performed under similar working
9 conditions; provided, however, that a job title or job description alone shall not determine
10 comparability.

11 “Working conditions” , shall include the circumstances customarily taken into

12 consideration in setting salary or wages, including, but not limited to, reasonable shift

13 differentials, physical surroundings and hazards encountered by employees performing a job.

14 (b) No employer shall discriminate in any way on the basis of gender in the payment of

15 wages, including benefits or other compensation, or pay any person a salary or wage rate less

16 than the rates paid to employees of a different gender for comparable work; provided, however,

17 that variations in wages, including benefits or other compensation shall not be prohibited if based

18 upon: (i) a bona fide system that rewards seniority with the employer; provided, however, that

19 time spent on leave due to a pregnancy-related condition and protected parental, family and

20 medical leave, shall not reduce seniority; (ii) a bona fide merit system; (iii) a bona fide system

21 which measures earnings by quantity or quality of production or sales; (iv) the geographic

22 location in which a job is performed; (v) education, training or experience to the extent such

23 factors are reasonably related to the particular job in question and consistent with business

24 necessity; or (vi) travel, if the travel is a regular and necessary condition of the particular job.

25 An employer who is paying a wage differential in violation of this section shall not

26 reduce the pay of any employee in order to comply with this section.

27 An employer who violates this section shall be liable to the employee affected in the

28 amount of the employee’s unpaid wages, including benefits or other compensation, and in an

29 additional equal amount of liquidated damages. Action to recover such liability may be

30 maintained in any court of competent jurisdiction by any 1 or more employees for and on their

31 own behalf, or on behalf of other employees similarly situated. Any agreement between the

32 employer and any employee to work for less than the wage to which the employee is entitled

33 under this section shall not be a defense to an action. An employee's previous wage or salary
34 history shall not be a defense to an action. The court shall, in addition to any judgment awarded
35 to the plaintiff, award reasonable attorneys' fees to be paid by the defendant and the costs of the
36 action.

37 The attorney general may also bring an action to collect unpaid wages, including benefits
38 or other compensation on behalf of 1 or more employees, as well as an additional equal amount
39 of liquidated damages, together with the costs of the action and reasonable attorneys' fees. Such
40 costs and attorneys' fees shall be paid to the commonwealth. The attorney general shall not be
41 required to pay any filing fee or other cost in connection with such action.

42 If an employee recovers unpaid wages, benefits or other compensation under this section
43 and also files a complaint or brings an action under 29 U.S.C. § 206(d) which results in an
44 additional recovery under federal law for the same violation, the employee shall return to the
45 employer the amounts recovered under this section, or the amounts recovered under federal law,
46 whichever is less.

47 Any action based upon or arising under sections 105A to 105C, inclusive, shall be
48 instituted within 3 years after the date of the alleged violation. For the purposes of this section, a
49 violation occurs when a discriminatory compensation decision or other practice is adopted, when
50 an employee becomes subject to a discriminatory compensation decision or other practice or
51 when an employee is affected by application of a discriminatory compensation decision or
52 practice, including each time wages, benefits or other compensation are paid, resulting in whole
53 or in part from such a decision or practice.

Notwithstanding the requirements of section 5 of chapter 151B, a plaintiff shall not be required to file a charge of discrimination with the Massachusetts Commission Against Discrimination as a prerequisite to bringing an action under this section.

(c) It shall be an unlawful practice for an employer to:

(1) 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;

(2) screen job applicants based on their wage, including benefits or other compensation or salary histories, including by requiring that an applicant's prior wages, including benefits or other compensation or salary history satisfy minimum or maximum criteria; or request or require as a condition of being interviewed, or as a condition of continuing to be considered for an offer of employment, that an applicant disclose prior wages or salary history;

(3) seek the salary history of any prospective employee from any current or former employer; provided, however, that a prospective employee may provide written authorization to a prospective employer to confirm prior wages, including benefits or other compensation or salary history only after any offer of employment with compensation has been made to the prospective employee;

(4) discharge or in any other manner retaliate against any employee because the employee: (i) opposed any act or practice made unlawful by this section; (ii) made or is about to make a complaint or has caused or is about to cause to be instituted any proceeding under this section; (iii) testified or is about to testify, assist or participate in any manner in an investigation

75 or proceeding under this section; or (iv) disclosed the employee's wages, benefits or other
76 compensation or has inquired about or discussed the wages of any other employee.

77 No employer shall contract with an employee to avoid complying with this subsection, or
78 by any other means exempt itself from this subsection; provided, however, that an employer may
79 prohibit a human resources employee, or any other employee whose job responsibilities require
80 access to other employees' compensation information, from disclosing such information without
81 prior written consent from the employee whose information is sought or requested, unless the
82 compensation information is a public record as defined in clause 26 of section 7 of chapter 4.

83 This subsection shall be enforced in the same manner as subsection (b); provided,
84 however, that an action based on a violation of clause (2) or (4) of this subsection may be
85 brought by or on behalf of 1 or more applicants for employment; and provided, further, that in
86 any action brought under this subsection, the plaintiff may also recover any damages incurred.

87 (d) An employer against whom an action is brought alleging a violation of subsection (b)
88 and who, within the previous 3 years and prior to the commencement of the action, has both
89 completed a self-evaluation of its pay practices in good faith and can demonstrate that reasonable
90 progress has been made towards eliminating compensation differentials based on gender for
91 comparable work in accordance with that evaluation, shall have an affirmative defense to
92 liability under subsection (b) and to any pay discrimination claim under section 4 of chapter
93 151B. For purposes of this subsection, an employer's self-evaluation may be of the employer's
94 own design, so long as it is reasonable in detail and scope in light of the size of the employer or
95 may be consistent with standard templates or forms issued by the attorney general.

96 Evidence of a self-evaluation or remedial steps undertaken in accordance with this
97 subsection shall not be admissible in any proceeding as evidence of a violation of this section or
98 section 4 of chapter 151B that occurred prior to the date the self-evaluation was completed or
99 within 6 months thereafter.

100 An employer who has not completed a self-evaluation shall not be subject to any negative
101 or adverse inference as a result of not having completed a self-evaluation.

102 (e) The attorney general may issue regulations interpreting and applying this section.

103 SECTION 3. Section 105B of said chapter 149, as so appearing, is hereby amended by
104 striking out, in line 9, the words “one hundred dollars” and inserting in place thereof the
105 following figure:- \$1,000.

106 SECTION 4. Section 16 of chapter 151 of the General Laws, as so appearing, is hereby
107 amended by inserting after the word “employed.”, in line 4, the following 2 sentences:-

108 All such employers shall also post a notice in their workplaces notifying employees of
109 their rights under section 105A of chapter 149. The notice shall be posted in a conspicuous place
110 in at least 1 location where employees congregate.

111 SECTION 5. Said section 16 of said chapter 151, as so appearing, is hereby further
112 amended by inserting after the word “orders”, in line 5, the following words:- or notices.

113 SECTION 6. There shall be a special commission to investigate, analyze and study the
114 factors, causes and impact of pay disparity based on gender. The special commission shall
115 consist of the following 15 members: the secretary of labor and workforce development, or a
116 designee who shall serve as chair; the attorney general, or a designee; 2 members appointed by

117 the speaker of the house of representatives; 1 member appointed by the house minority leader; 2
118 members appointed by the senate president; 1 member appointed by the senate minority leader;
119 and 7 members appointed by the governor, 1 of whom shall represent employers, 2 of whom
120 shall have experience in the field of gender economics; 1 of whom shall represent the Women's
121 Bar Association of Massachusetts, Inc.; 1 of whom shall represent the Commission on the Status
122 of Women; 1 of whom shall represent the Massachusetts chapter of the National Organization for
123 Women; and 1 of whom shall represent organized labor.

124 The commission shall submit its initial findings to the clerks of the house of
125 representatives and senate, the chairs of the house and senate committees on ways and means and
126 the chairs of the joint committee on labor and workforce development not later than January 1,
127 2019. The commission shall file subsequent annual reports on January 1 of each year with a final
128 report on January 1, 2024. The final report may also include drafts of any proposed legislation to
129 further reduce the pay disparity based on gender.

130 SECTION 7. This act shall take effect on January 1, 2018.