

CLIENT ALERT: Massachusetts Pay Equity Act – Attorney General Issues Guidance – By Tracy Thomas Boland and Maura McLaughlin

The Office of the Attorney General of the Commonwealth of Massachusetts today issued long-awaited guidance on the Massachusetts Pay Equity Act, which amends the existing Massachusetts Equal Pay Act (and which is referred to in the guidance as “MEPA”). A link to the Attorney General’s publication, “An Act to Establish Pay Equity: Overview and Frequently Asked Questions,” appears [here](#). (A detailed discussion of MEPA’s provisions may be found in an earlier MBJ Client Alert, “[Massachusetts Pay Equity Bill Signed into Law.](#)”)

The guidance provides additional information on open questions under MEPA, including:

- which employers and employees are covered by MEPA;
- the definition of comparable work, including more detail on what “skill, effort, and responsibility” mean and how to evaluate working conditions;
- the factors which may be considered in looking at the statutory exceptions to the equal pay requirement;
- permissible and prohibited inquiry into salary history; and
- liability and enforcement.

Of particular interest to employers, the publication provides guidance with respect to the affirmative defense for employers’ self-evaluations of pay practices, both in the form of frequently asked questions and in an appendix entitled, “Self-Evaluations – A Basic Guide for Employers” (the “Guide”). The Guide, while limited to general guidelines and not a one-size-fits-all approach to evaluations, sets out steps to think about in conducting a self-evaluation, including considerations on how to calculate and assess possible pay differences. The Guide also contains a link to the “AGO’s Pay Calculation Tool” which may be of use to employers with “small, clearly defined groupings of comparable jobs and relatively simple pay structures.” The Guide specifically recommends that employers “should consult with legal

counsel about their options and what type of analysis is most appropriate for their organizations.”

Finally, the guidance contains a “Sample Checklist – Policies & Practices Review” which aids employers in reviewing policies and practices that could create liability under MEPA and offers pointers for compliance including revising documents such as policies, application forms and job descriptions, and training for hiring and human resources personnel, supervisors and managers.

MBJ will issue a further, in-depth client alert with additional detail next week. This initial information is being provided immediately given the fact that so many have been anxiously awaiting this guidance. In the meantime, employers should contact their MBJ attorney with questions about compliance, self-evaluations and other questions arising under MEPA.

Tracy Thomas Boland and Maura McLaughlin are partners at Morgan, Brown & Joy, LLP, and may be reached at 617-523-6666 or at tboland@morganbrown.com and mmclaughlin@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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