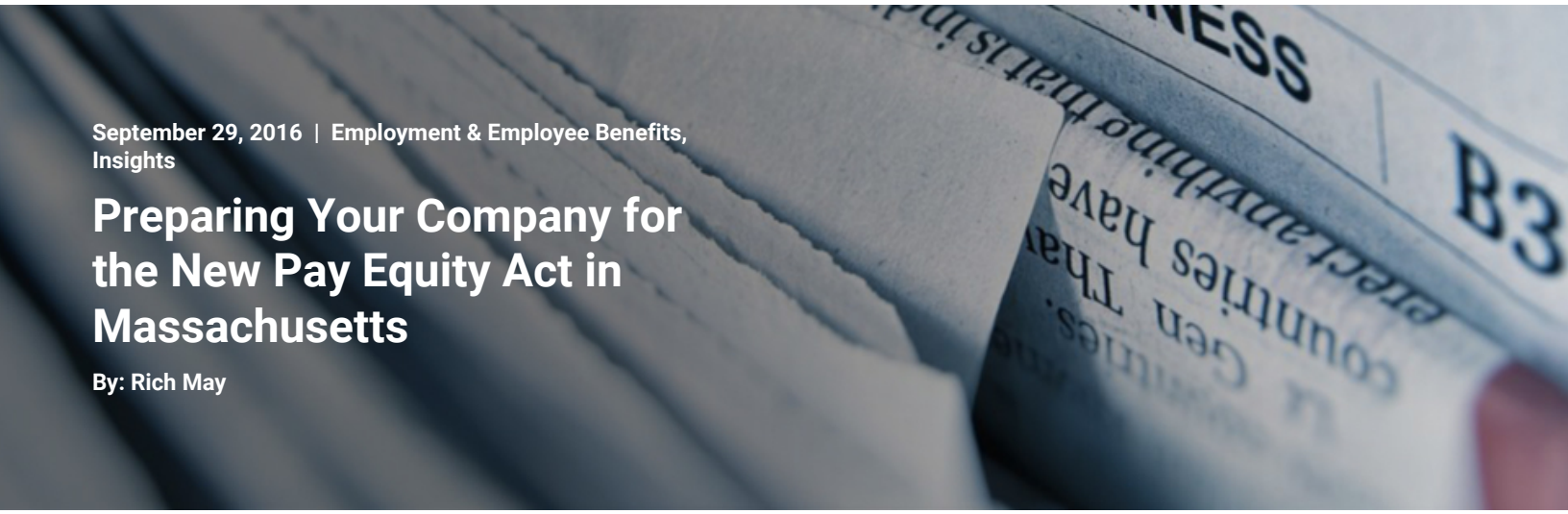


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Preparing Your Company for the New Pay Equity Act in Massachusetts

By: Rich May

For the past several decades, legislation has been in place to address the long-standing existence of gender pay discrimination. Under federal and Massachusetts law, employers are generally required to provide men and women equal compensation for comparable work. But until recently, in Massachusetts, "comparable work" was determined merely by job titles and job descriptions.



On August 1, 2016, in a further effort to reduce the gender wage gap, Governor Charlie Baker signed into law an act that not only expands the definition of "comparable work" but also curbs common pay secrecy and pay inquiry practices by employers. The Act takes effect **July 1, 2018** and makes the following substantive amendments:

- "Comparable work" is now defined by the lower-paying job's substantial similarity in skill, effort, and responsibility to that of the higher-paying job; any pay disparity may only be justified by certain factors defined in the Act:
- An employer may neither ask prospective employees about pay histories nor prohibit any discussion about pay in the workplace.

The consequences for violating the above restrictions include employer liability for up to double the amount of any unpaid wages, plus legal costs and attorneys' fees.

The new act does provide an affirmative defense to pay disparity claims for those who can show a good faith effort to address the gender pay disparity, through the completion of self-evaluation reports. The law gives the employer latitude in conducting the self-evaluation, so long as the report is "reasonable in detail and scope in light of the size of the employer." The affirmative defense is effective for three years from the date of completion of the report.

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Importantly, the affirmative defense does not extend to claims of pay secrecy and pay inquiry. Still, employers can protect themselves from these claims by establishing and enforcing written policies that prohibit inquiries about a prospective employee's salary history, and by not imposing any restrictions on discussing pay.

The new law is a substantial reform in equal pay legislation; and regulations under the law are expected to be forthcoming. The attorney general may issue regulations interpreting and analyzing any provision and may also issue standard forms for self-evaluation. Employers are encouraged to consult counsel with questions about compliance.

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