



The Future Starts Now: Future of Work for New England Employers

Part 5: Pay Equity and Transparency

Barry J. Miller
Christopher W. Kelleher

May 17, 2023

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2023 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





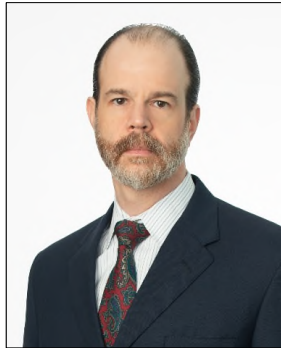
Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2023 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

Speakers



Barry J. Miller
Partner
BOSTON

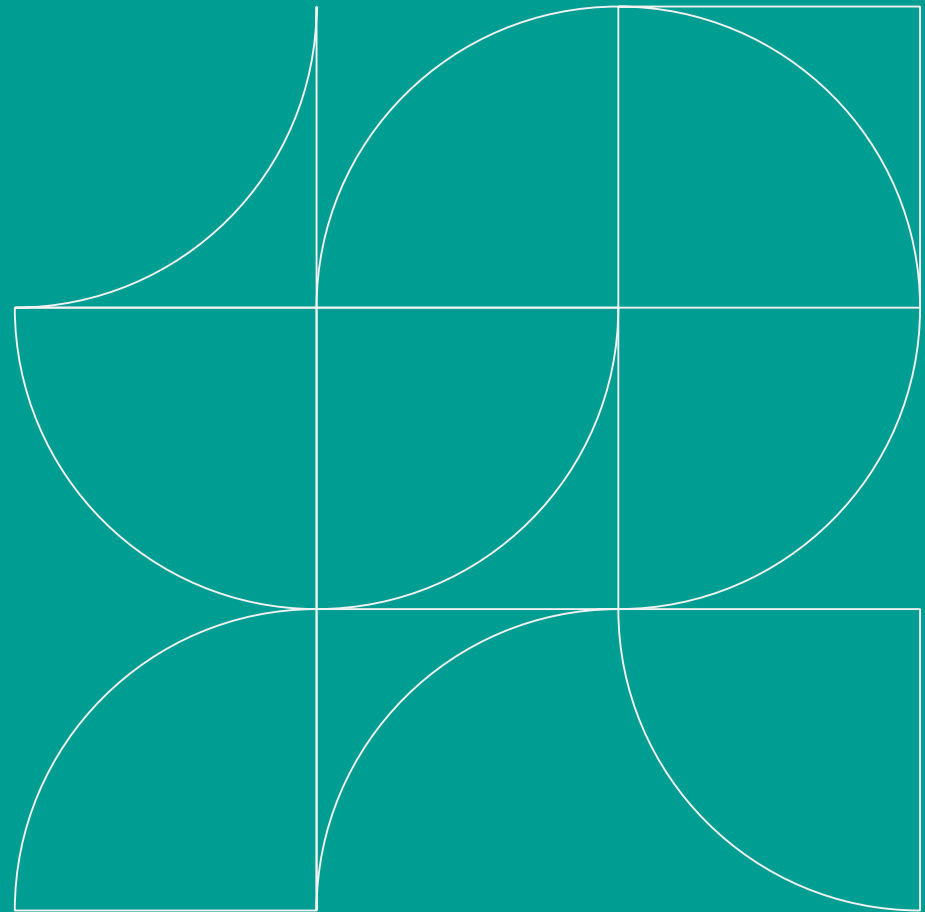


Christopher W. Kelleher
Associate
BOSTON

Agenda

- 01** Massachusetts Equal Pay Act
- 02** Trends in Pay Transparency Laws
- 03** Mass. Proposed Pay Transparency & Data Reporting Law
- 04** Compliance Strategies

Massachusetts Equal Pay Act (“MEPA”)



Comparable Work Standard

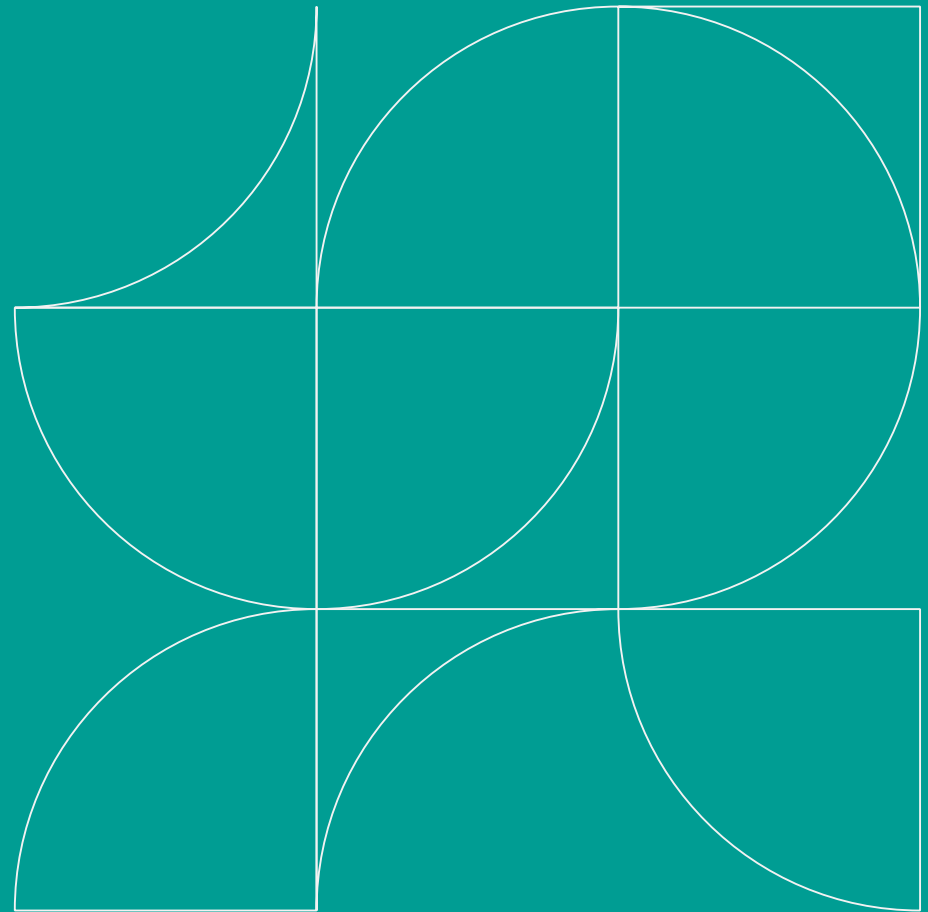
- **Comparable Work** – “requires substantially similar skill, effort and responsibility and is performed under similar working conditions ...”
- **Working Conditions** – “include[s] environmental and other similar circumstances customarily taken into consideration in setting salary or wages ...”
Exceptions – (1) seniority system; (2) merit system; (3) a system which measures earnings by quantity or quality of production, sales, or revenue; (4) geographic location; (5) education, training or experience; or (6) travel, if regular and necessary.

Good Faith Audit Defense

- Complete defense for employer that, within the ***previous three years*** and before an action is filed against it, conducts a good faith, ***reasonable self-evaluation*** of its pay practices.
- The self-evaluation must be ***reasonable in detail and scope*** and the employer must also show ***reasonable progress*** towards eliminating any impermissible gender-based wage differences that its self-evaluation may reveal.



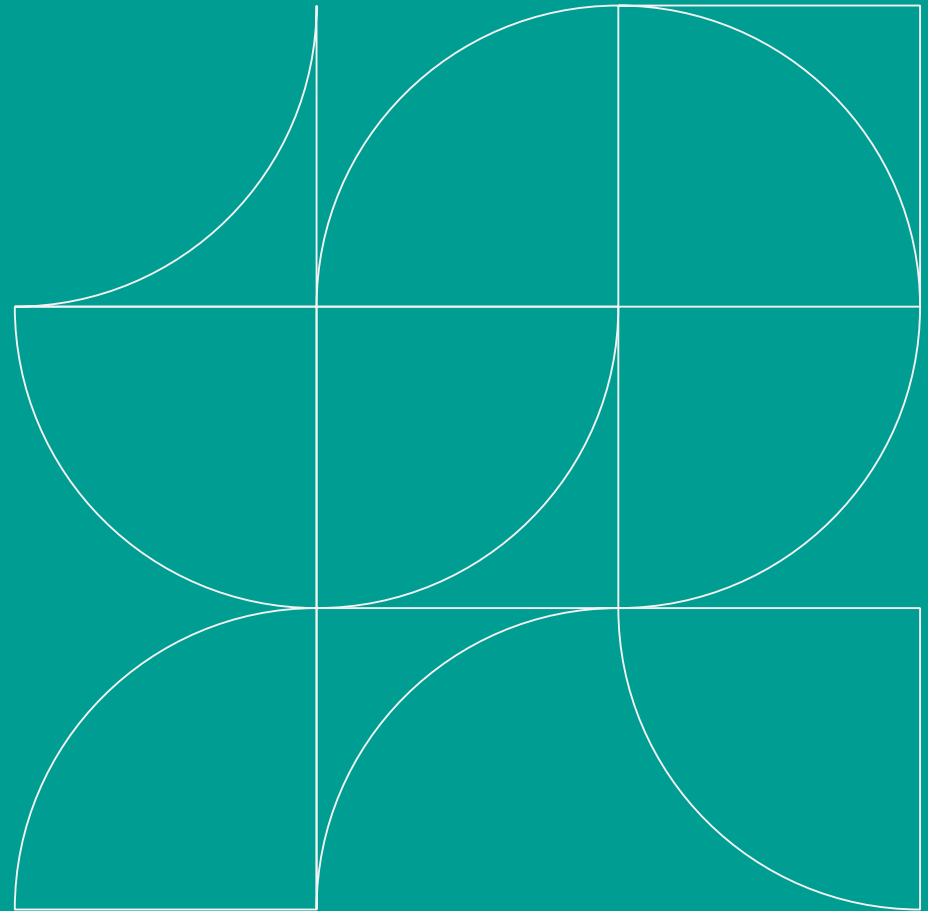
Trends in Pay Transparency Laws



Pay Transparency Laws (Northeast / New York)

- **Connecticut** (eff. 10/1/21) – Requires disclosure of salary ranges to applicants and employees.
- **New York City** (eff. 11/1/22) – Employers advertising jobs in NYC must include a good faith salary range for every job, promotion, and transfer opportunity advertised.
- **Rhode Island** (eff. 1/1/23) – Upon an applicant's (including internal transfers) request, employer must provide wage range for open position.
- **New York State** (eff. 9/17/23) – Requires NY employers with four employees to disclose compensation ranges in advertisements and job postings, including for new hires and internal promotions.

Massachusetts' Looming Pay Transparency and Pay Data Reporting Law



Mass. Pay Transparency / Pay Data Reporting Bill

- **Frances Perkins Workplace Equity Act**
 - Several bills and draft proposals in play
 - Reboot of legislation from 2021-2022 term
 - Some drafts merge Pay Transparency requirements and new Pay Data Reporting regime
 - Likely to be passed into law during the current term and effective in 2024
- **Applies to “Covered Employers”** – could be 15-100 employees in Massachusetts
- **Pay Transparency Component**
 - Pay range: annual salary or hourly rate that employer “reasonably and in good faith expects to pay for such position”
 - Provide pay range for a particular employment position upon advertising or posting
 - Provide pay range for position upon request to employee holding position (& maybe applicants)
 - Prohibit retaliation against applicants or employees who oppose unlawful practices / complain

Mass. Pay Transparency / Pay Data Reporting Bill

- Pay Data Reporting

- Based on Employer's EEO-1 data
- Requires report of number of employees by race, gender (or maybe gender identity) in pre-defined categories (Executive, Sales Workers, Laborers, etc.)
- May require separate report of number of employees by race and gender falling into each BLS pay band during a single pay period of employer's choice
- Report may be published on Sec. of Commonwealth's website with corporate filings

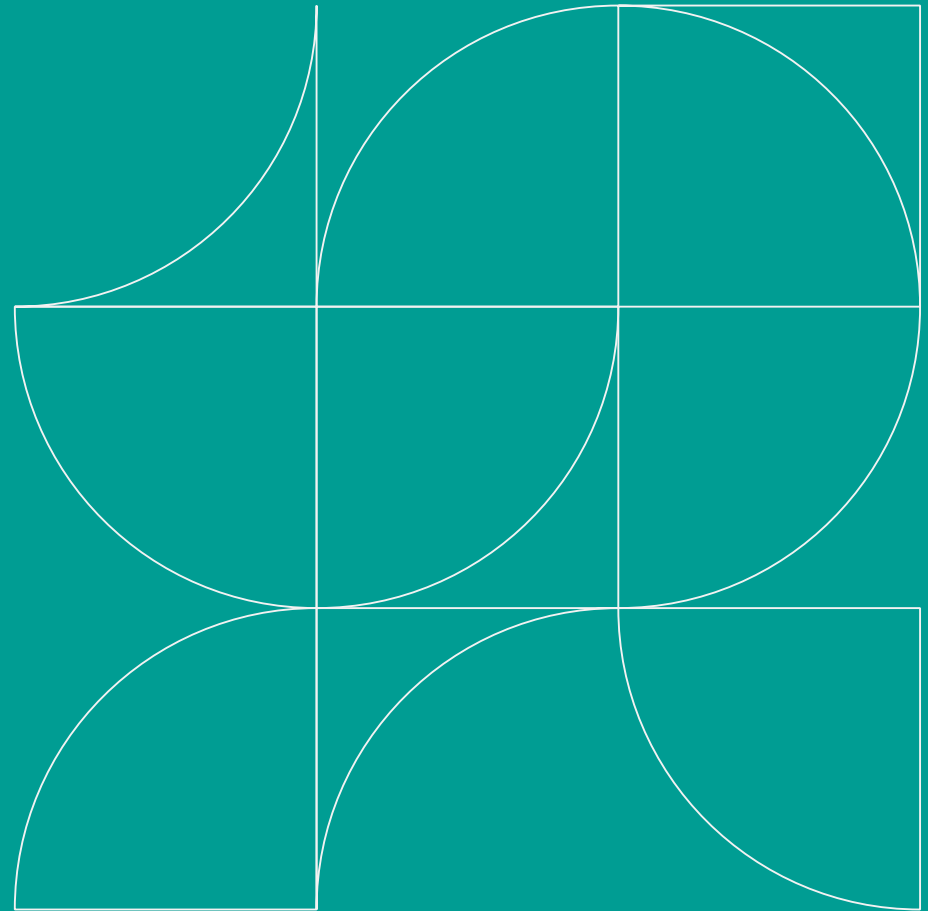
Enforcement:

- Attorney General will enforce the law, no private right of action or 3x damages
- Violations punishable by (1) warning for first offense; (2) \$500 for second offense; public citation and \$15,000 - \$25,000 fine "for each violation"

Mass. Pay Transparency / Pay Data Reporting Bill

- Novel “Pipeline Promotional Opportunities Fund”
 - “Covered Employers” required to report annually on ratio of women/minorities in “senior positions,” including EVP, SVP, AVP, GM, C-level officers, etc.
 - Aggregation of industry data to determine representation of women/minorities in “senior positions” in six metropolitan statistical areas
 - Employees of a Covered Employer that is below ratio in their area for women/minorities in senior positions may apply for funds for professional development and coaching services to enhance their prospects for promotion and advance gender/racial parity in leadership of Covered Employer

Compliance Strategies



Compliance Strategies

- Develop/Revisit Internal Compensation Ranges
 - Assess rigor of ranges
 - Align hiring practices to compensation to ranges
- Develop Strategy for Public Disclosure of Pay Ranges
 - Disclose whole range vs. narrower target range
 - Harmonize with pay transparency obligations in other jurisdictions
 - Strategy for internal posting of information relating to pay ranges
- Pay Equity Review
 - Contributes to affirmative defense to MEPA claims
 - Pressure test pay ranges and compensation infrastructure
 - Opportunity to remediate disparities before more onerous disclosure obligations arise
 - Equips employer to respond to internal questions about pay equity

Compliance Strategies

- Preparing for Pay Data Disclosure
 - Review EEO-1 filings from previous years for race/gender disparities
 - Assess ratio of women/minorities in “senior positions”
 - Consider messaging that may be appropriate in conjunction with disclosures
 - Consider identifying/assisting diverse leadership candidates to take advantage of professional development coaching

Thank You

For more information please contact:

Barry J. Miller

Email: bmiller@seyfarth.com

Phone: (617) 946-4806

Christopher W. Kelleher

Email: ckelleher@seyfarth.com

Phone: (617) 946-4811