



## 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).  
©2022 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



# **Micro-Webinar Series:** Hot Topics in Employment Law for Massachusetts Health Care Organizations

## **Part 1 – Pay Equity**

July 19, 2022

**Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2022 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



# Speakers

---



**Hillary Massey**  
*Senior Counsel*  
BOSTON



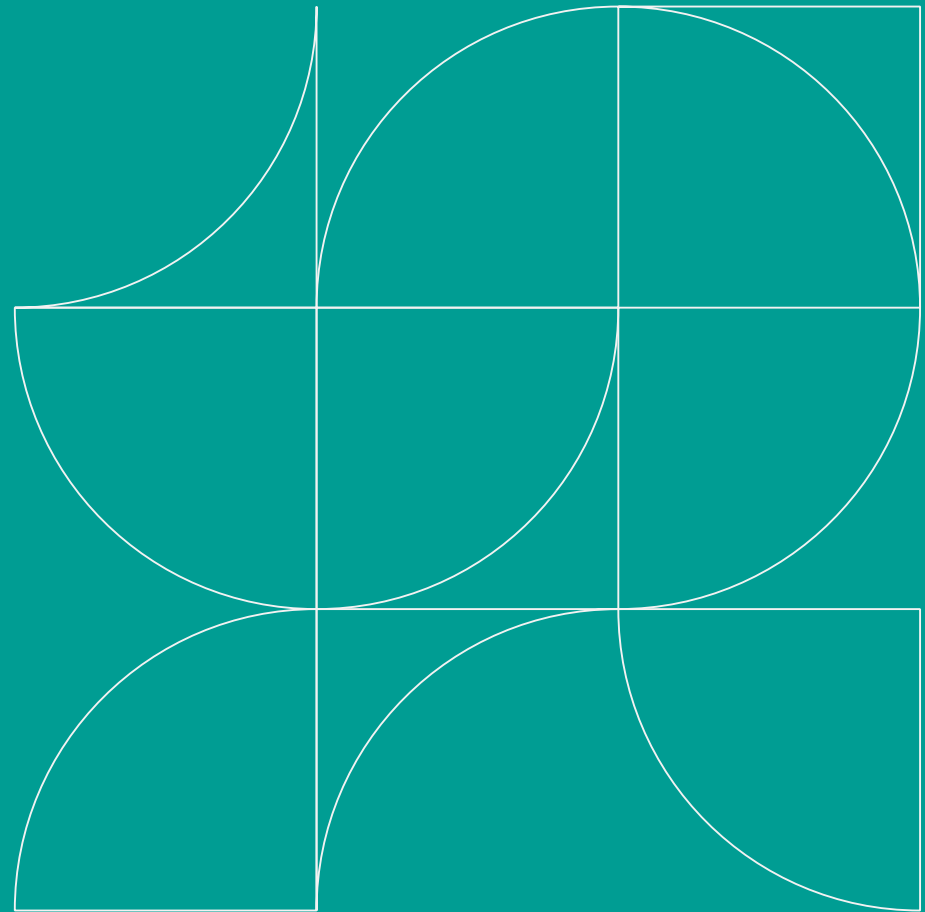
**Kristin McGurn**  
*Partner & National Health Care  
Group Co-Chair*  
BOSTON

# Agenda

---

- 01** State Equal Pay Laws
- 02** State Salary History Bans
- 03** State Pay Transparency Laws
- 04** State Pay Reporting Laws
- 05** Best Practices

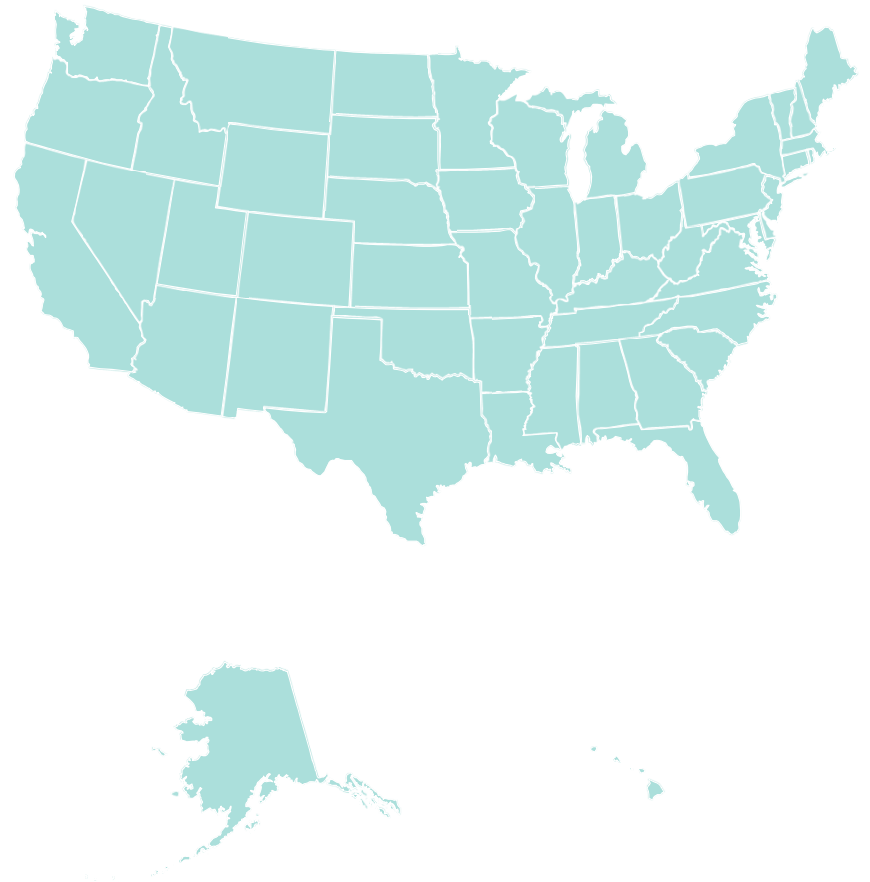
# State Trend #1: Tougher Equal Pay Laws



# State Equal Pay Laws

---

- There has been a wave of changes amending the state law equivalents of the federal Equal Pay Act.
- In 2015-2016, the first amendments were passed in California, New York, and Massachusetts.
  - Massachusetts has a unique affirmative defense for employer self-audits; still not tested.
- Since then, other states have followed suit.
- The vast majority of states now have laws.



# Comparing Federal and State Equal Pay Laws

## Equal Pay Act

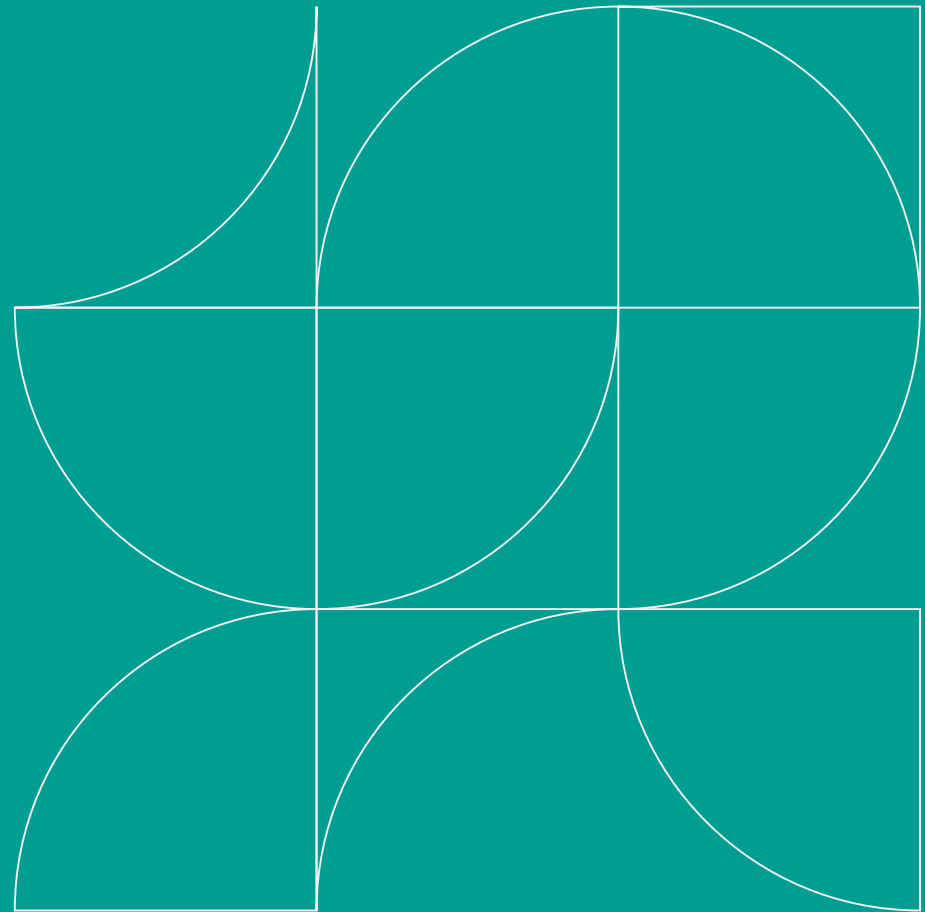
vs.

## State Law Equivalents

- Protected Category: Sex
- Compares pay of workers whose jobs require **equal** skill, effort, and responsibility, and are performed under similar working conditions
- Comparators must be in same establishment
- Pay differences can be explained by “any other factor other than sex”
- Affirmative defenses: No business necessity requirement

- Expanded protected categories (e.g., race, age, caregiver status, and other categories)
- Compares employees whose jobs require **similar** skill/effort/responsibility or **comparable** work
- Comparators need not be in same establishment in many jurisdictions
- Pay differences can be explained only by certain limited factors
- Affirmative defenses: may have a business necessity requirement; self-audit

# State Trend #2: Salary History Bans



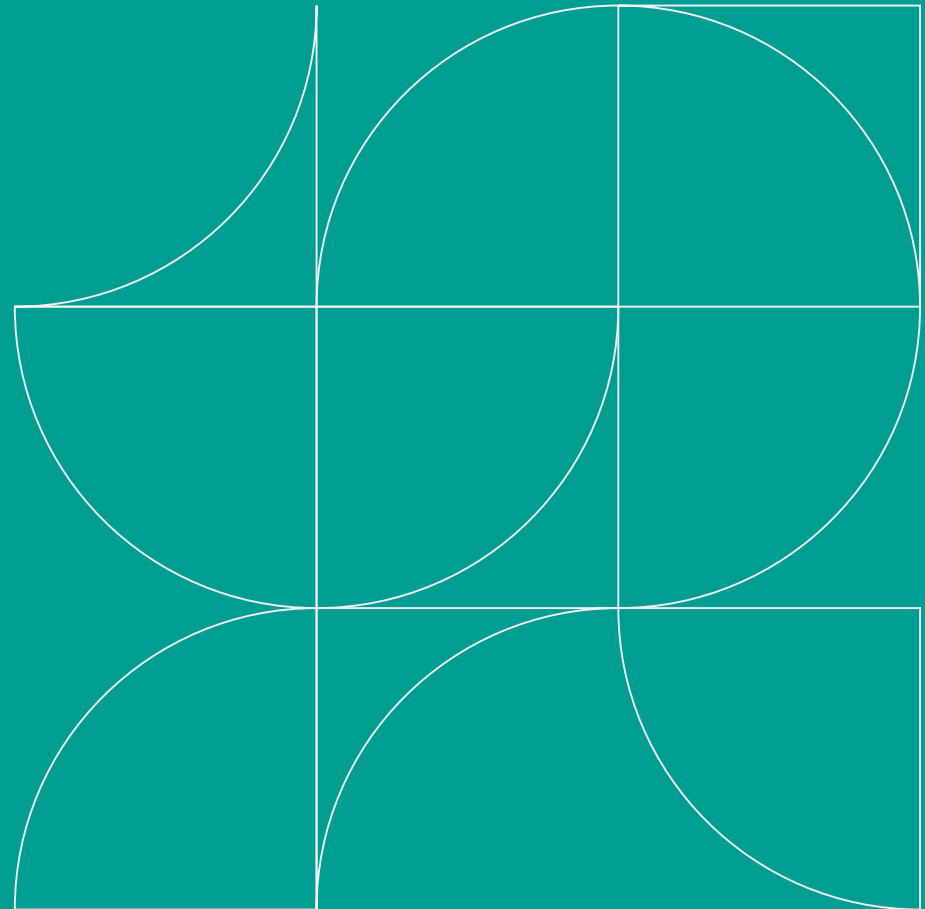


# Salary History Bans

- Prohibit employers from requesting an applicant's previous salary either directly from an applicant and/or the applicant's past employer.
- Massachusetts was one of the first; others in region have followed (CT, VT, NY state and several cities)
- Some of these laws also prohibit a hiring entity from screening applicants based on their prior wages or utilizing this information to set pay for a new hire.
- The stated goal of these laws is to ensure employees are paid appropriately for the work they perform, and that their pay is not negatively impacted by past sex discrimination.
- To date, there has been little to no enforcement of these laws.



# State Trend #3: Pay Transparency / Pay Range Disclosure Laws



# Pay Range Disclosure Laws

---

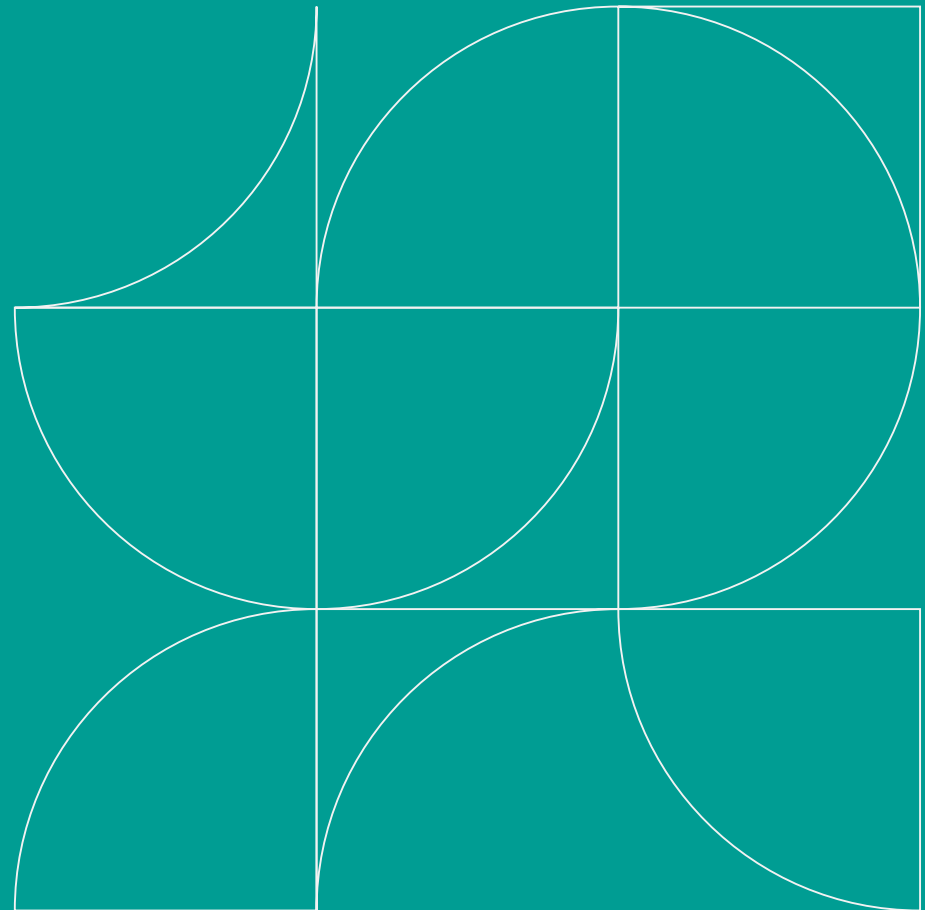
States and cities require that employers provide the pay range of a role to applicants, and in some instances employees, either upon reasonable request or with job postings.

The goal is to address the informational advantage employers have traditionally enjoyed.

Massachusetts has proposed but surprisingly has not passed a law. The impacted jurisdictions so far are below, and the list keeps growing:

- California
- Colorado (far-reaching implications because applies to remote work done elsewhere)
- Connecticut
- Maryland
- Nevada
- New York state (pending approval); also NYC (eff. 11/22), Ithaca (9/22), and Westchester County (11/22)
- New Jersey (Jersey City)
- Ohio (Toledo and Cincinnati)
- Rhode Island (eff. 1/1/23)
- Washington State (per amendment eff. 1/1/23, will have to be in posting, not just on request)

# State Trend #4: Pay Reporting Laws



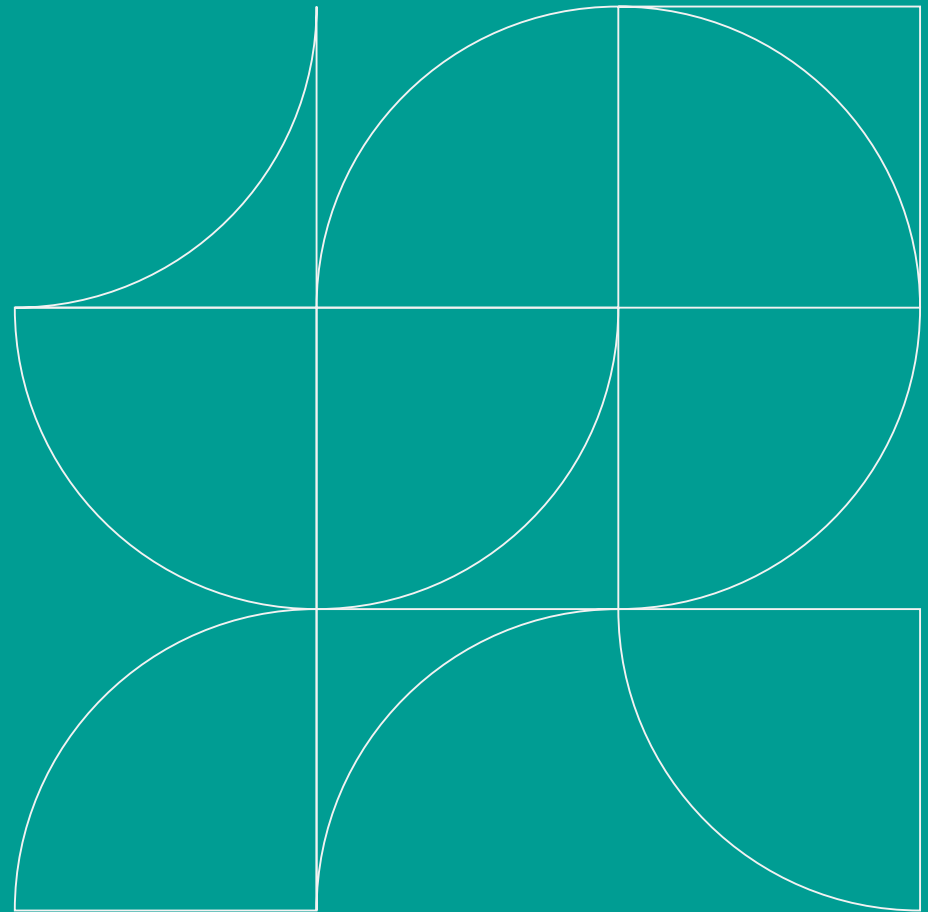
# Pay Reporting Requirements

---

- The most recent trend has been a move towards pay data reporting requirements (California and Illinois so far).
- Gives rise to lots of concerns about confidentiality of the information provided.
  - **California:** Employers with 100 or more employees nationwide, and at least one employee in CA, must report pay and hours-worked by establishment, job category, sex, race, and ethnicity to the Department of Fair Employment and Housing by March 31 each year.
  - **Illinois:** Employers with more than 100 Illinois employees will be required to apply for an Equal Pay Registration Certificate by submitting a compliance statement and pay data report to the Illinois Department of Labor. The pay data report must include the pay, gender and race/ethnicity categories as reported in the employer's EEO-1 report. In addition, employers must submit employee-level data. Employers will be required to recertify every two years.



# Best Practices for Health Care Organizations



# Best Practices

---

- Conduct a **privileged** pay audit (but not an unprivileged internal audit).
- Update and use job classification and grading systems.
- Designate a pay equity expert to track new laws and make recommendations about compliance.



# Thank You

**For more information please contact:**

**Hillary Massey**

Email: [hmassey@seyfarth.com](mailto:hmassey@seyfarth.com)

Phone: (617) 946-4879

**Kristin McGurn**

Email: [kmcgurn@seyfarth.com](mailto:kmcgurn@seyfarth.com)

Phone: (617) 946-4858