

One Minute Memo®



Massachusetts Attorney General Investigations Open New Front in Equal Pay Battle

By Barry J. Miller, Daniel B. Klein, and Jessica Schauer Lieberman

The Massachusetts Attorney General's Office recently issued a wave of information requests to employers in the Commonwealth seeking data on how companies pay their employees. Unlike familiar requests from the AG's Fair Labor Division seeking information about whether employees are paid for all hours worked, paid overtime, or receiving the requisite meal breaks, these requests come from the AG's Civil Rights Division and seek information targeted at compliance with the Massachusetts Equal Pay Act ("MEPA").

The "Gender Wage Gap" is a highlight issue in the current election cycle, including in the race for the White House, with some candidates promising new legislation or stronger enforcement of existing laws requiring equal pay for equal work. This debate has also begun to play out on a local level in Massachusetts. Last January, bills that would amend MEPA to broaden its reach were introduced in the Legislature, HB1733 (SB 983 in the Senate). The proposed amendment would extend the statute of limitations and change the standard for what constitutes "comparable work." The proposed legislation would also prohibit employers from seeking salary history information from prospective employees for an interview or as a condition of employment.

Attorney General Maura Healey has testified before the Massachusetts Legislature in favor of legislative reform of MEPA and stronger measures to ensure equal pay for women, expressing further interest in ensuring equal pay for mothers and women of color. The Attorney General's Office has also been working informally with the Legislature on the proposed amendment, and last Fall sought feedback from the employment bar regarding that proposal. In addition to these efforts, the AG's Office has recently commenced investigation and enforcement efforts through information requests to selected employers throughout the Commonwealth. The AG's Office has declined to disclose the number of information requests it has issued in conjunction with its most recent initiative and declined to describe how it selected the employers to which it has sent such requests.

The AG's latest inquiries request information not only on employees' compensation and gender, but also information including employees' "race/gender," a topic that is not even mentioned in the current version of MEPA. In conjunction with these inquiries, the AG has also sought "job descriptions for each and every title/position" at the companies subject to investigation.

The stakes posed by MEPA investigations could prove to be very high. The current version of MEPA provides for an automatic award of double damages and attorneys' fees to employees who are paid less than employees of the opposite sex. In addition to authorizing enforcement actions by the AG, the statute also authorizes aggrieved employees to bring class action lawsuits against their employers on behalf of themselves and others similarly situated. As Massachusetts employers have come to know well, such litigation can prove to be a tremendous distraction and expense, regardless of the merits of the claims or the outcome of the case. Employers seeking to stay ahead of this trend should consider pay equity reviews, and employers that have already found themselves subject to inquiries and investigations should be mindful of the potential ramifications in providing their responses.

[Barry J. Miller](#) and [Daniel B. Klein](#) are both partners in Seyfarth's Boston office, and [Jessica Schauer Lieberman](#) is an associate in the firm's Boston office. If you would like further information, please contact your Seyfarth attorney, or Barry J. Miller at bmiller@seyfarth.com, Daniel B. Klein at dklein@seyfarth.com, or Jessica Schauer Lieberman at jlieberman@seyfarth.com.

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