

An Employer's 2019 Checklist: Four Essential Actions for Massachusetts Employers

Hinckley Allen Labor & Employment

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2018 was a **landmark year for employment law** in Massachusetts – and 2019 is already shaping up to be a busy year for human resources teams, employment attorneys, and all of those who are responsible for establishing and communicating workplace policies.

Governor Baker **signed into law** a major wage and benefits bill that will gradually increase the regular hourly minimum wage to \$15. The same law also implements a mandatory paid leave program that allows employees to take up to 12 weeks of paid family leave to care for a family member or bond with a new child, and take up to 20 weeks to address personal medical issues. In addition, an updated equal pay law and new restrictions on non-compete agreements also took effect last year. Together, these changes will impact employees from the Berkshires to Boston.

As we kick off the year, the time is now for employers to develop an action plan to ensure their employee policies are aligned with changes in the law. Here are four essential actions to consider.

Update Employee Handbooks and Policies

Due to these significant legal changes, employers should proactively update employee handbooks, offer letters, contracts, and other workplace policies. When doing so, employers must consider how these changes fit within the broader context of federal laws like the Family and Medical Leave Act, plus existing state laws, such as those concerning earned sick time and family leave. These laws all work in conjunction with one another. For employers, especially those with workers in multiple states, establishing policies that follow one law without violating another can feel like solving a Rubik's Cube. For this reason, it's critical to take the time to discuss policy changes, and make updates accordingly.

Communicate Payroll Changes Openly

Massachusetts's new law concerning minimum wage and paid leave will require payroll changes in 2019 and beyond. In fact, minimum wage increases are already in effect. Starting **January 1, 2019**, the regular hourly minimum wage has increased from \$11 to \$12. Under the new law, it will continue to increase annually, ultimately reaching \$15 in 2023.

Payroll changes resulting from the paid leave law, on the other hand, will not be as straightforward. Starting **July 1, 2019**, all Massachusetts employers with 25 or more Massachusetts-based employees will be required to contribute an amount equal to 0.63% of each employee's wages to the Family and Employment Security Trust Fund. Employers will be able to deduct a portion of their contribution from employees' wages. Employers should communicate transparently with employees about this deduction. While these contributions will fund paid family and medical leave, it is important for employers to clarify that the Paid Family and Medical Leave Program will not take effect until **January**

1, 2021. This approach is intended to ensure there are enough funds available to finance the program.

Audit Pay Equity Practices

On **July 1, 2018**, the updated Massachusetts Equal Pay Act (MEPA) went into effect. The law provides clarity on what constitutes gender-based wage discrimination, adds new protections for workers, and incentivizes employers to address gender-based pay disparities. The incentive? As guidance from the Attorney General's office states, "the law provides a complete defense for any employer that, within the previous three years and before an action is filed against it, has conducted a good faith, reasonable self-evaluation of its pay practices." To be eligible for this affirmative defense, the self-evaluation must be reasonable in detail and scope. Employers must also show reasonable progress towards eliminating any unfair gender-based wage differences that the self-evaluation may reveal.

While employers are not required to conduct self-evaluations, they would be well-served to consider doing so. On one hand, a self-evaluation could be costly and time-consuming, and has the potential to uncover unequal pay practices. On the other hand, it is better to uncover unequal practices and work toward solutions, rather than ignoring issues. Self-evaluations are the right thing to do, and they also make good business sense, considering an employer who violates MEPA is generally liable for twice the amount of the unpaid wages owed to the affected employee, plus reasonable attorneys' fees and costs.

Re-evaluate Non-Compete Agreements

The merits of non-compete agreements between employers and workers have been debated at length, especially in Massachusetts, where brainpower and trade secrets are key to our "innovation economy." In 2018, new restrictions on non-compete agreements took effect, which limit non-competes to one year, require that an employee have at least 10 days before they begin employment to review the agreement, and exempt certain employees. The new law also states that non-competes must either provide for "garden leave" or pay some "other mutually agreed upon consideration."

Ensuring compliance with these new restrictions requires more than simply reviewing non-compete language. Employers would also be wise to review non-competes entered into prior to **October 1, 2018**, as litigants may claim on public policy grounds that an agreement that does not comply with the new restrictions is unenforceable. Finally, employers should re-evaluate if they can adequately protect business interests without non-competes, given the costs these agreements can bring.

With a new year well underway, now is the perfect time to take these important steps to ensure a fair workplace. And while these steps may sound simple, they are easier said than done. Employers should consult with their [legal counsel](#) to mitigate any risks and ensure full compliance with these changes.

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