

**SENATE . . . . . No. 2107**

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The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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SENATE, Thursday, January 21, 2016

The committee on Ways and Means, to whom was referred the Senate Bill to establish pay equity (Senate, No. 983),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2107).

[Fiscal Note: \$5,000,000]

For the committee,  
Karen E. Spilka

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## The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act to establish pay equity.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 1 of chapter 149 of the General Laws, as appearing in the 2014  
2 Official Edition, is hereby amended by striking out the definition of “Woman”.

3           SECTION 2. Said chapter 149 is hereby amended by striking out section 105A, as so  
4 appearing, and inserting in place thereof the following section:-

5           Section 105A. (a) As used in this section “comparable work”, shall solely mean work that  
6 is substantially similar in content and requires substantially similar skill, effort and responsibility  
7 and is performed under similar working conditions; provided, however, that a job title or job  
8 description alone shall not determine comparability.

9           (b) No employer shall discriminate in any way on the basis of gender in the payment of  
10 wages or other compensation, including benefits and other compensation, or pay any person a  
11 salary or wage rates less than the rates paid to employees of a different gender for comparable  
12 work; provided, however, that variations in wages shall not be prohibited if based upon: (i) a  
13 bona fide system that rewards seniority with the employer; provided, however, that time spent on

14 leave due to a pregnancy-related condition and protected parental, family and medical leave,  
15 shall not reduce seniority; (ii) a bona fide merit system; (iii) a bona fide system which measures  
16 earnings by quantity or quality of production or sales; (iv) the geographic location in which a job  
17 is performed if 1 geographic location has a lower cost of living based on the federal bureau of  
18 labor statistics consumer price index; or (v) education, training or experience to the extent such  
19 factors are reasonably related to the particular job in question and consistent with business  
20 necessity.

21 An employer who is paying a wage differential in violation of this section shall not  
22 reduce the pay of any employee in order to comply with this section.

23 An employer who violates this section shall be liable to the employee affected in the  
24 amount of the employee's unpaid wages and in an additional equal amount of liquidated  
25 damages. Action to recover such liability may be maintained in any court of competent  
26 jurisdiction by any 1 or more employees for and on their own behalf or on behalf of other  
27 employees similarly situated. Any agreement between the employer and any such employee to  
28 work for less than the wage to which such employee is entitled under this section shall not be a  
29 defense to such action. An employee's previous wage or salary history shall not be a defense to  
30 such action. The court in such action shall, in addition to any monetary or declarative judgment  
31 awarded to the plaintiff, award reasonable attorneys' fees to be paid by the defendant and the  
32 costs of the action.

33 The attorney general may also bring an action to collect unpaid wages on behalf of 1 or  
34 more employees, as well as an additional equal amount of liquidated damages, together with the  
35 costs of the action and reasonable attorneys' fees. Such costs and attorneys' fees shall be paid to

36 the commonwealth. The attorney general shall not be required to pay any filing fee or other cost  
37 in connection with such action.

38 If an employee recovers unpaid wages, benefits or other compensation under this section  
39 and also files a complaint or brings an action under 29 U.S.C. § 206(d) which results in an  
40 additional recovery under federal law for the same violation, the employee shall return to the  
41 employer the amounts recovered under this section, or the amounts recovered under federal law,  
42 whichever is less.

43 Any action based upon or arising under sections 105A to 105C, inclusive, shall be  
44 instituted within 3 years after the date of the alleged violation. For the purposes of this section, a  
45 violation occurs when a discriminatory compensation decision or other practice is adopted, when  
46 an employee becomes subject to a discriminatory compensation decision or other practice or  
47 when an employee is affected by application of a discriminatory compensation decision or  
48 practice, including each time wages, benefits or other compensation are paid, resulting in whole  
49 or in part from such a decision or practice.

50 Notwithstanding the requirements of section 5 of chapter 151B, a plaintiff shall not be  
51 required to file a charge of discrimination with the Massachusetts Commission Against  
52 Discrimination as a prerequisite to bringing an action under this section.

53 (c) It shall be an unlawful practice for an employer to:

54 (1) require, as a condition of employment, that an employee refrain from inquiring  
55 about, discussing or disclosing information about either the employee's own wages or about any  
56 other employee's wages;

57 (2) screen job applicants based on their wage or salary histories, including by  
58 requiring that an applicant's prior wages or salary history satisfy minimum or maximum criteria  
59 or by requesting or requiring as a condition of being interviewed or as a condition of continuing  
60 to be considered for an offer of employment that an applicant disclose prior wages or salary  
61 history;

62 (3) seek the salary history of any prospective employee from any current or  
63 former employer; provided, however, a prospective employee may provide written authorization  
64 to a prospective employer to confirm prior wages or salary history only after an offer of  
65 employment has been made to the prospective employee;

66 (4) discharge or in any other manner retaliate against any employee because the  
67 employee: (i) opposed any act or practice made unlawful by this section; (ii) made or is about to  
68 make a complaint or has caused or is about to cause to be instituted any proceeding under this  
69 section; (iii) testified or is about to testify, assist or participate in any manner in an investigation  
70 or proceeding under this section; or (iv) disclosed such employee's wages, benefits or other  
71 compensation or has inquired about or discussed the wages of any other employee.

72 No employer shall contract with an employee or by any other means exempt itself from  
73 this subsection, provided, however, that an employer may prohibit a human resources employee,  
74 or any other employee whose job responsibilities require access to other employees'  
75 compensation information, from disclosing such information without prior written consent from  
76 the employee whose information is sought or requested.

77 This subsection shall be enforced in the same manner as subsection (b); provided,  
78 however, that an action based on a violation of clause (2) or (4) of this subsection may be

79 brought by or on behalf of 1 or more applicants for employment; and provided, further, that in  
80 any action brought under this subsection, the plaintiff may also recover any damages incurred.

81 (d) An employer against whom an action is brought alleging a violation of subsection (b)  
82 and who, within the previous 3 years and prior to the commencement of such action, has both  
83 completed a self-evaluation of its pay practices in good faith and can demonstrate that reasonable  
84 progress has been made towards eliminating compensation differentials based on gender for  
85 comparable work in accordance with that evaluation, shall have an affirmative defense to  
86 liability under subsection (b) and to any pay discrimination claim under section 4 of chapter  
87 151B. For purposes of this subsection, an employer's self-evaluation may be of the employer's  
88 own design so long as it is reasonable in detail and scope in light of the size of the employer or  
89 may conform to standard templates, forms or other guidance issued by the attorney general.

90 Evidence of a self-evaluation or remedial steps undertaken in accordance with this  
91 subsection shall not be admissible in any proceeding as evidence of a violation of this section or  
92 section 4 of chapter 151B that occurred prior to the date the self-evaluation was completed or  
93 within 6 months thereafter.

94 An employer who has not completed a self-evaluation shall not be subject to any negative  
95 or adverse inference as a result of not having completed a self-evaluation.

96 (e) The attorney general may issue regulations interpreting and applying this section.

97 SECTION 3. Section 105B of said chapter 149, as so appearing, is hereby amended by  
98 striking out, in line 9, the words "one hundred dollars" and inserting in place thereof the  
99 following figure:- \$1,000.

100 SECTION 4. Section 16 of chapter 151 of the General Laws, as so appearing, is hereby  
101 amended by inserting after the word “employed.”, in line 4, the following 2 sentences:-

102 All such employers shall also post a notice in their workplaces notifying employees of  
103 their rights under section 105A of chapter 149. The notice shall be posted in a conspicuous place  
104 in at least 1 location where employees congregate.

105 SECTION 5. Said section 16 of said chapter 151, as so appearing, is hereby further  
106 amended by inserting after the word “orders”, in line 5, the following words:- or notices.

107 SECTION 6. This act shall take effect on January 1, 2018.