

# SENATE . . . . . No. 2119

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Senate, January 21, 2016 -- Text of the Senate Bill to establish pay equity (Senate, No. 2119)  
(being the text of Senate, No. 2107, printed as amended)

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

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, the following words shall have the following  
6 meanings unless the context clearly requires otherwise:

7           “Comparable work”, shall solely mean work that is substantially similar in that it requires  
8 substantially similar skill, effort and responsibility and is performed under similar working  
9 conditions; provided, however, that a job title or job description alone shall not determine  
10 comparability.

11           “Working conditions” , shall include the circumstances customarily taken into  
12 consideration in setting salary or wages, including, but not limited to, reasonable shift  
13 differentials, physical surroundings and hazards encountered by employees performing a job.

14           (b) No employer shall discriminate in any way on the basis of gender in the payment of  
15 wages, including benefits or other compensation, or pay any person a salary or wage rate less  
16 than the rates paid to employees of a different gender for comparable work; provided, however,  
17 that variations in wages, including benefits or other compensation shall not be prohibited if based  
18 upon: (i) a bona fide system that rewards seniority with the employer; provided, however, that  
19 time spent on leave due to a pregnancy-related condition and protected parental, family and  
20 medical leave, shall not reduce seniority; (ii) a bona fide merit system; (iii) a bona fide system  
21 which measures earnings by quantity or quality of production or sales; (iv) the geographic  
22 location in which a job is performed; (v) education, training or experience to the extent such  
23 factors are reasonably related to the particular job in question and consistent with business  
24 necessity; or (vi) travel, if the travel is a regular and necessary condition of the particular job.

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

27           An employer who violates this section shall be liable to the employee affected in the  
28 amount of the employee’s unpaid wages, including benefits or other compensation, and in an  
29 additional equal amount of liquidated damages. Action to recover such liability may be  
30 maintained in any court of competent jurisdiction by any 1 or more employees for and on their  
31 own behalf, or on behalf of other employees similarly situated. Any agreement between the  
32 employer and any employee to work for less than the wage to which the employee is entitled

33 under this section shall not be a defense to an action. An employee's previous wage or salary  
34 history shall not be a defense to an action. The court shall, in addition to any judgment awarded  
35 to the plaintiff, award reasonable attorneys' fees to be paid by the defendant and the costs of the  
36 action.

37         The attorney general may also bring an action to collect unpaid wages, including benefits  
38 or other compensation on behalf of 1 or more employees, as well as an additional equal amount  
39 of liquidated damages, together with the costs of the action and reasonable attorneys' fees. Such  
40 costs and attorneys' fees shall be paid to the commonwealth. The attorney general shall not be  
41 required to pay any filing fee or other cost in connection with such action.

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

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

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

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

58 (1) require, as a condition of employment, that an employee refrain from inquiring  
59 about, discussing or disclosing information about either the employee's own wages, including  
60 benefits or other compensation, or about any other employee's wages;

61 (2) screen job applicants based on their wage, including benefits or other  
62 compensation or salary histories, including by requiring that an applicant's prior wages,  
63 including benefits or other compensation or salary history satisfy minimum or maximum criteria;  
64 or request or require as a condition of being interviewed, or as a condition of continuing to be  
65 considered for an offer of employment, that an applicant disclose prior wages or salary history;

66 (3) seek the salary history of any prospective employee from any current or  
67 former employer; provided, however, that a prospective employee may provide written  
68 authorization to a prospective employer to confirm prior wages, including benefits or other  
69 compensation or salary history only after any offer of employment with compensation has been  
70 made to the prospective employee;

71 (4) discharge or in any other manner retaliate against any employee because the  
72 employee: (i) opposed any act or practice made unlawful by this section; (ii) made or is about to  
73 make a complaint or has caused or is about to cause to be instituted any proceeding under this  
74 section; (iii) testified or is about to testify, assist or participate in any manner in an investigation

75 or proceeding under this section; or (iv) disclosed the employee's wages, benefits or other  
76 compensation or has inquired about or discussed the wages of any other employee.

77 No employer shall contract with an employee to avoid complying with this subsection, or  
78 by any other means exempt itself from this subsection; provided, however, that an employer may  
79 prohibit a human resources employee, or any other employee whose job responsibilities require  
80 access to other employees' compensation information, from disclosing such information without  
81 prior written consent from the employee whose information is sought or requested, unless the  
82 compensation information is a public record as defined in clause 26 of section 7 of chapter 4.

83 This subsection shall be enforced in the same manner as subsection (b); provided,  
84 however, that an action based on a violation of clause (2) or (4) of this subsection may be  
85 brought by or on behalf of 1 or more applicants for employment; and provided, further, that in  
86 any action brought under this subsection, the plaintiff may also recover any damages incurred.

87 (d) An employer against whom an action is brought alleging a violation of subsection (b)  
88 and who, within the previous 3 years and prior to the commencement of the action, has both  
89 completed a self-evaluation of its pay practices in good faith and can demonstrate that reasonable  
90 progress has been made towards eliminating compensation differentials based on gender for  
91 comparable work in accordance with that evaluation, shall have an affirmative defense to  
92 liability under subsection (b) and to any pay discrimination claim under section 4 of chapter  
93 151B. For purposes of this subsection, an employer's self-evaluation may be of the employer's  
94 own design, so long as it is reasonable in detail and scope in light of the size of the employer or  
95 may be consistent with standard templates or forms issued by the attorney general.

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

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

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

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

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

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

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

113 SECTION 6. There shall be a special commission to investigate, analyze and study the  
114 factors, causes and impact of pay disparity based on gender. The special commission shall  
115 consist of the following 15 members: the secretary of labor and workforce development, or a  
116 designee who shall serve as chair; the attorney general, or a designee; 2 members appointed by

117 the speaker of the house of representatives; 1 member appointed by the house minority leader; 2  
118 members appointed by the senate president; 1 member appointed by the senate minority leader;  
119 and 7 members appointed by the governor, 1 of whom shall represent employers, 2 of whom  
120 shall have experience in the field of gender economics; 1 of whom shall represent the Women's  
121 Bar Association of Massachusetts, Inc.; 1 of whom shall represent the Commission on the Status  
122 of Women; 1 of whom shall represent the Massachusetts chapter of the National Organization for  
123 Women; and 1 of whom shall represent organized labor.

124 The commission shall submit its initial findings to the clerks of the house of  
125 representatives and senate, the chairs of the house and senate committees on ways and means and  
126 the chairs of the joint committee on labor and workforce development not later than January 1,  
127 2019. The commission shall file subsequent annual reports on January 1 of each year with a final  
128 report on January 1, 2024. The final report may also include drafts of any proposed legislation to  
129 further reduce the pay disparity based on gender.

130 SECTION 7. This act shall take effect on January 1, 2018.