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Reliable Market Data is Critical in Wake of Massachusetts "Fair Pay" Law and Others Like It

The new law prevents employers from asking for a candidate's salary history, which increases the importance of accurate market data as well as the benefits of a formal pay program.

Massachusetts recently became the first state to ban employers from asking prospective employees for their salary history, including benefits and other compensation. Governor Charlie Baker signed the bill— *An Act to Establish Pay Equity*— into law on August 1, 2016 and it takes effect on July 1, 2018.

The bill is aimed at reducing pay disparities between men and women in the workplace. Many employers still set salaries for new-hires based on their past income levels, and simply adjust salaries upward to incentivize candidates to leave their current job.

The new law is specifically designed to address the long-standing practice where pay decisions are based on prior compensation rather than market rates for jobs. The theory behind the law is that if an employee received below-market wages for one job, their lower pay level is likely to be perpetuated if, when they apply to new jobs, the prospective employer uses prior pay rather than current market rates as the baseline for the offer. While the law was designed to address gender-based pay disparities, the implications of the law will extend to all job seekers.

Under the new law, future salary offers could be extended at higher or lower levels than they would have otherwise been. Employees that were earning below market rate could receive higher offers from prospective employers. On the other hand, job candidates earning above market pay may receive an offer lower than their current pay. As such, these individuals may need to negotiate more vigorously than has historically been the case when employers could estimate the "likely minimum" required for an offer to be accepted. That is all under the assumption that more compensation is required to encourage job changes.

Practical Implications of the Law

Overall, we see the following as likely outcomes from the pay equity law:

- External benchmarks (i.e., market-based pay) will become even more important for HR and compensation professionals and hiring managers. They will need reliable, industry-specific survey data to pulse the market rates for specific jobs in different geographic centers. Job seekers have already begun using crowdsourced survey data to try to bolster their negotiation tactics. But this data isn't always reliable nor does it take into account unique circumstances— experience, location, company's compensation philosophy, and other elements of a company's total rewards package. Employers should ensure they have reliable competitive data that allows them to rationally explain how they arrive at salary ranges for job levels, job families and specific roles, including those that might be hard to fill. The same line of thinking applies to laws like the California Fair Pay Act, which went into effect at the start of 2016 and requires companies to consider factors beyond job titles like skillsets, effort expended and responsibilities when assessing equal pay. More than ever, companies will need reliable, standardized job-specific and market-specific data to justify pay decisions in a more transparent manner.

- Internal benchmarks (i.e., salary ranges) will likely become more helpful in providing context for pay ranges based on the value of similar positions in the organization. Companies setting pay rates for specific jobs using "market reference points" may decide to share this information more broadly to provide hiring managers with additional context for recommended new hire salary guidelines. Companies can also do their part to ensure employees understand the company's compensation philosophy, the role and relationship of each element of pay, how performance influences pay outcomes, and the expectations of the job level and specific position.

- Conversations about the broader employee value proposition will become more important when recruiting candidates that are already earning above market pay. Equity incentives, wellness benefits and work-life balance are all important components of an employee value proposition these days.

- Those previously paid below market value will gain some ground in pay negotiation. That would go a long way toward accomplishing the goal of the law: to close pay disparities among individuals performing similar work, including gaps that fall along gender lines.

- The law could also neutralize another hurdle for employees who are currently paid above market and are willing to accept less pay. This law allows them to avoid the assumption that they won't accept a job offer for less than what they were making previously. This type of situation could arise for individuals that are winding down their career and want to pass off some job responsibilities in exchange for less pay or people that have left the workforce for an extended period of time and trying to re-establish themselves in their career.

It's important to note the new law doesn't prohibit job candidates from voluntarily offering their salary history, which is something they might continue to do if they believe they are already earning above market value or above the targeted salary of the position.

The bill also allows employees to discuss their salaries with their coworkers without being subject to retribution from their employer. This provision was intended as another way that pay inequities could be discovered. Some companies have already explored ways to add more pay transparency in the workplace. GoDaddy told *The Wall Street Journal* that they publish an employee's salary range for their position on their paycheck, while social media startup Buffer takes it a step further by publishing employees' pay details on their website.

Looking Ahead

This legislation is likely to make the assignment of starting salaries a more market-based process— one that starts with an established hiring range for the position based on the competitive local market. From there, the assignment of each individual's starting salary can be based on a comparison of their qualification and experience against the standards of the job.

The Massachusetts law is emblematic of a larger fair pay movement sweeping the country. California's fair pay law, which went into effect at the beginning of 2016 requires employers to pay equally for "substantially similar" work. The law has opened the door wider for employees to challenge their pay and impressed the need upon companies to document a rigorous approach and process to developing pay levels. Equal pay laws are pending in more than half a dozen states across the country.

If your company needs assistance with market pricing jobs, establishing internal benchmarks by developing salary structures, or would like to discuss other ways equal pay laws might impact your organization, contact us at consulting@radford.com.

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