

NOTE TO MEDIA: Michael C. Harrington and other members of LeClairRyan's Employment Litigation practice are available as resources for bylined articles or interviews on various labor and employment issues.

For: LeClairRyan, Hartford, Conn.
From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

Companies Should Revisit Policies and Eliminate Gender-Based Pay Differences as More States Increase Equal-Pay Requirements, Warns LeClairRyan's Harrington

HARTFORD, Conn. (7/17/18)— As an increasing number of states attempt to address gender-based pay gaps with new legislation, companies need to be aware of the laws that may affect them, warns Michael C. Harrington, a Hartford-based partner in LeClairRyan and a member of the national law firm's Employment Litigation team.

"For 55 years the Federal Equal Pay Act has mandated employers to pay men and women the same pay for the same work," he says. "But salary surveys continue to show that women are paid less than men. Some legislative provisions aimed at resolving this are fairly similar among multiple states, but a few have enacted unique provisions."

This year alone, new laws are already in effect or scheduled to be implemented in California, Massachusetts, New Jersey, Michigan, Vermont, while new Connecticut legislation will become effective in January 2019. Harrington sets out some highlights, along with suggestions, in a blog, [States Continue To Pass Equal Pay Legislation](#).

"Some studies indicate that an employee's starting salary with a new employer is often based upon the individual's salary with their previous employer, so discriminatory pay discrepancies may follow an individual through his or her career," explains Harrington. "In an effort to address this issue, a growing number of states have banned or are banning employers from inquiring into an applicant's salary or compensation history during the hiring process."

States like New York and Wisconsin currently limit the salary inquiry ban to public-sector employers, he notes. "In addition, some counties and cities — including New York City; Albany County, N.Y.; Westchester County, N.Y.; San Francisco; Chicago; New Orleans; Philadelphia; and Pittsburgh — have their own restrictions."

Some states are also passing more-expansive legislation like Massachusetts' Equity Pay Act ([MEPA](#)) and New Jersey's Law Against Discrimination ([LAD](#)), which went into effect July 1. In New Jersey, for example, absent a legitimate business reason, equal pay will generally be required for "comparable work," or activity that requires substantially similar skill, effort, and responsibility, and is performed under similar working conditions. The state's LAD also prohibits differences based upon any protected classes, including sex, race, creed, color, national origin, ancestry, nationality, disability, age, pregnancy, and breastfeeding.

Under the Massachusetts Pay Equity Act, employers may be immune from suit if the company conducted an audit of its pay practices and took reasonable steps to eliminate any impermissible gender-based wage differentials revealed in the audit — other than reducing the higher-paid employee's salary — within three years prior to suit.

“Like Massachusetts, New Jersey prohibits employers from correcting pay discrepancies by reducing an employee’s compensation,” Harrington notes. “But New Jersey will also have one of the longest statutes of limitation to bring a compensation-related claim – six years – and employers who are not in compliance will face triple damages.”

He says employers may wish to bolster their defenses now by reviewing standard employment applications to make sure they are compliant with each jurisdiction’s laws; training appropriate employees on how to conduct an effective and lawful interview; and reviewing their compensation structure to ascertain whether employees who perform comparable work are being equally compensated as required by state and federal law.

“This may not be easily accomplished,” Harrington said. “But the costs associated with acting now may pale compared to the costs of inaction.”

The full column is available at: <https://rworkplacedefender.com/states-continue-to-pass-equal-pay-legislation/>

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Press Contacts: At Parness & Associates Public Relations, Bill Parness, (732) 290-0121, bparness@parnesspr.com or Lisa Kreda, lkreda@parnesspr.com