

McDermott  
Will & Emery



# YOUR ATTENTION, PLEASE: EMERGING TRENDS IN EMPLOYMENT AND EMPLOYEE BENEFITS

January 31, 2019

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# FILLING IN THE GAPS: PAY EQUITY

# PAY EQUITY

## Federal Standard

- Compare similarly situated employees doing same job

## Patchwork of State and Local Laws – Heightened Requirements

- Twelve states, Puerto Rico, and several municipalities have passed pay equity laws broader than federal law
  - California – “substantially similar” standard
  - Massachusetts – “comparable work”
  - Oregon – “work of comparable character”

# NEW DEVELOPMENTS IN CALIFORNIA

## Pay Equity Clarifications (AB 2282)

- Prohibitions in AB 168 do not apply to current employees
- Pay scale only required to be provided upon request *after* applicant has completed an initial interview
- Asking for applicant's salary expectation vs. applicant's prior salary

## Pay Equity through PAGA?

- Pending Supreme Court case law – can pay equity claims be brought under PAGA
- Implications for arbitration, class discovery

# PAY EQUITY: ACTION ITEMS

## Best Practices

- Establish compensation ranges across substantially similar jobs (composite of skill, effort, and responsibility)
- Take into account job-related factors when establishing and evaluating employee compensation
  - Education, work experience, tenure
  - NOT prior compensation
- Conduct pay equity analysis under privilege
  - Massachusetts safe harbor
- Time analysis and remedial action thoughtfully