

10 Actionable Compliance Steps for Massachusetts Employers

May 16, 2023

Massachusetts employment laws are notoriously complex. Employers face the constant challenge of managing their workforces while also complying with the commonwealth's ever-evolving legal requirements. Below we have listed 10 actionable steps that private-sector employers in Massachusetts should take to promote compliance and avoid common pitfalls.

1. Ensure compliance with Massachusetts background laws

Pursuant to the Massachusetts "Ban the Box" law, it is unlawful for employers to ask about an applicant's criminal record on an employment application. In addition, with certain exceptions, employers may not ask about an applicant or employee's criminal history.

2. Fulfill Massachusetts-specific noncompete considerations

Employers wishing to secure noncompetition agreements must comply with the Massachusetts Non-Competition Agreement Act, which went into effect on October 1, 2018. In addition to the minimum drafting requirements set forth by the act (as detailed in [our August 2018 client alert](#)), employers should present a noncompetition agreement alongside an offer letter, at least 10 business days before the start date.

3. Audit employee onboarding documentation practices

In addition to [workplace posting requirements](#), numerous notices must be provided to new hires based in Massachusetts. All Massachusetts employers with at least six employees must provide upon hire and annually to all employees a written copy of the company's sexual harassment policy **and** provide written notice to employees of their rights under the Pregnant Workers Fairness Act via [the Massachusetts Commission Against Discrimination Guidance](#).

All Massachusetts employers also must provide a copy of the [Earned Sick Time Notice of Employee Rights](#) to Massachusetts employees at time of hire, or include any sick time policy in an employee handbook, **and** provide written information relating to the Massachusetts Paid Family and Medical Leave Law through [Department of Family and Medical Leave notices](#).

4. Conduct annual anti-harassment trainings

The Massachusetts Fair Employment Practices Act encourages employers to conduct anti-harassment trainings for new employees within their first year of employment.

5. Update policies to comply with the Creating a Respectful and Open World for Natural Hair (CROWN) Act

Through the Massachusetts CROWN Act of 2022, Massachusetts expanded the term “race” under the Fair Employment Practices Act to include “traits historically associated with race, including, but not limited to, hair texture, hair type, hair length and protective hairstyles.” Employers should review their anti-harassment and equal employment opportunity policies to reference such expanded protected classes.

6. Review family and medical leave policies

Qualifying Massachusetts workers are eligible to take up to 26 weeks of paid leave per benefit year under the Massachusetts Paid Family and Medical Leave program (as detailed in our [May 2019](#), [June 2019](#) and [September 2019](#) client alerts). For employers offering additional parental leave, it is important to review parental leave policies and confirm that, if desired, all statutory and company-offered leaves are taken concurrently.

7. Review practices regarding separation

All employers should be mindful of termination best practices, including:

- Ensure compliance with final pay obligations. Involuntarily terminated employees must receive final pay on the separation date, which should include all accrued wages, any accrued but unused vacation, and any earned commissions.
- Implement a procedure to ensure prompt and full return of company devices and a review of such devices for suspicious activity.
- Remind departing employees of their continuing obligations under any restrictive covenant agreement.
- Review and refresh separation agreements, including with respect to the recent National Labor Relations Board decision on nondisparagement and confidentiality provisions, as detailed in our [February 2023 client alert](#).
- Distribute the requisite [unemployment insurance notice](#).

8. Review incentive-based compensation plans

Employers that offer bonuses, commissions or other forms of incentive-based compensation should review their plans to ensure they clearly define when eligible incentive compensation is earned and when it is paid. Avoiding such ambiguities can protect against violations of the Massachusetts Wage Act.

9. Review Fair Labor Standards Act compliance and ensure accurate job descriptions

All employers should regularly review job duties and salaries of all employees classified as exempt from overtime under the federal Fair Labor Standards Act. Job descriptions should accurately capture job duties to protect the company from potential misclassification claims. Additionally, employers should ensure that they are tracking hours for non-exempt employees and paying overtime for time worked in excess of 40 hours per week.

10. Comply with the Massachusetts personnel file law

As we explained in a [December 2021 client alert](#), employers with 20 or more employees should maintain personnel files in accordance with the Massachusetts personnel file law, which requires employers to notify an employee within 10 days of any information added to a personnel file that has been or may be used in connection with an adverse employment action. Employers also must provide a copy of the personnel file to an employee or former employee within five business days of such a request.

If you have questions about addressing any of these issues, please contact the Cooley employment team.

Key Contacts

Charlotte Drew Boston	cdrew@cooley.com +1 617 937 1388
Bronwyn L. Roberts Boston	broberts@cooley.com +1 617 937 2434

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.