FAQs

1) **Do out-of-state employers have to comply with the law?**

   Employers with 25 or more employees with a primary place of work in Massachusetts during the prior calendar year must comply with the wage transparency requirements of Chapter 149 Section 105F. Employers with 100 or more employees with a primary place of work in Massachusetts must also comply with the reporting requirements of Chapter 149 Section 105E.

   The definition of "primary place of work" is consistent with its definition in the Attorney General's Office Earned Sick Time FAQs, and accompanying regulations, 940 CMR 33.00.

2) **How does the Act define an "employee," for the purposes of determining an employer's headcount?**

   "Employee" means any person who performs services for an employer for wage, remuneration, or other compensation is an employee and must be included in the employers' headcount. This includes all full-time, part-time, seasonal, and temporary employees.

   The Act's definition of "employee" does not include persons under the age of eighteen engaged in domestic service in the home of the employer, or persons engaged in agricultural service, or employees of any social club, fraternal, charitable, educational, religious, scientific or literary association, no part of the net earnings of which enures to the benefit of any private individual. *See* Gen. Laws Ch. 149, § 1.

3) **Do out-of-state remote employees count towards an employers' headcount?**

   Only out-of-state remote employees whose primary place of work is Massachusetts count towards a Massachusetts employer's headcount.

4) **How and when will an employer's headcount of Massachusetts employees be calculated?**

   Employers should calculate their headcount once per year, as an average over all of the payroll periods of that year. Employers should do this by adding the number of employees, including full time, part-time, seasonal, and temporary employees, on the payroll during each pay period of the year and dividing by the number of pay periods. If the employer has pay periods with no one on the payroll, the number of employees counted for that pay period is zero.

5) **Is the salary range posting requirement limited to jobs in Massachusetts? What about jobs that can be done anywhere, including Massachusetts?**

   Section 105F's requirement to disclose the pay range in the posting of a position applies to all positions where the primary place of work is Massachusetts. This includes positions that

can be performed remotely to a Massachusetts worksite and remote workers with a primary place of work in Massachusetts.

6) **How should employers handle the pay range for positions that are tipped or commission-based?**

   Section 105F defines "pay range" as the annual salary range or hourly wage range that the Covered Employer reasonably and in good faith expects to pay for such position at that time. If the position's hourly or salary wage is based on a piece rate or commission, then the piece rate or commission range the employer reasonably expects to pay for the position must be included in the job posting.

7) **How should the law define "applicant?" Must the person be able to demonstrate a reasonable level of qualification for the position?**

   All individuals who are applying for a particular or specific employment position are applicants. The law does not limit the definition of "applicant" based on an individual's level of qualification for the position.

8) **Must employers who are not currently required by the EEOC to submit EEO reports prepare and submit such reports to the Commonwealth?**

   Only employers who are required by the EEOC to file EEO reports must submit those EEO reports to the Commonwealth.

9) **Is there a requirement to share a pay range with an incumbent or only if there is a vacancy in that role?**

   The law requires a Covered Employer, or its agent, to provide the pay range for a particular and specific employment position to an employee holding such position upon request, even if there is no vacancy in that role.

10) **Are employers who do not currently have to submit EEO reports to the EEOC subject to the reporting requirements in 105E?**

    Only employers who are required to submit the following reports to the EEOC will be required to submit these reports to the Secretary of the Commonwealth as well, according to the schedule outlined below:

Employers who file:	**Must file EEO Report with the Secretary:**	**By:**	**Starting in year:**
EEO-1	Annually	February 1	2025
EEO-3	Odd Numbered Years	February 1	2025
EEO-4	Even Number Years	February 1	2026
EEO-5	Odd Numbered Years	February 1	2025

11) How do employers file their EEO reports with the Secretary of the Commonwealth?

Employers can file their EEO reports at such time as they are required to, at the link here: https://www.sec.state.ma.us/divisions/corporations/eeo-data-reports.htm.

12) Are there any parameters around what constitutes a "pay range"?

In stating the minimum and maximum annual salary or hourly wage for a position, the range may extend from the lowest to the highest annual salary or hourly wage the employer reasonably and in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.

13) What if an employee or prospective employee believes their rights have been violated?

We encourage you to file a complaint with the Attorney General's Fair Labor Division. You can find more information at https://www.mass.gov/how-to/file-a-workplace-complaint.