

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
SJC FAR

APPEALS COURT NO. 2024-P-1086

LAUREN WOODWARD,
Plaintiff-Appellant,

v.

Board of Registration in Nursing and Massachusetts
Department of Public Health,

Defendants-Appellees

APPELLANT'S APPLICATION FOR FURTHER APPELLATE REVIEW

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Dated: January 21, 2026
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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

I. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW..... 5

II. STATEMENT OF PRIOR PROCEEDINGS..... 6

III. Short Statement of Facts Relevant to the Appeal. 7

 1. Defendants Adopted Policies and Practices Aimed at Hiring More Men. 7

 2. Defendants Decided to Pay Messrs. Pettigrew and Riggs Higher Salaries Than Plaintiff Without Justification. 10

 3. Defendants' Self-Evaluation Did Not Identify Plaintiff as Even Potentially Having an Impermissible Pay Disparity. 14

IV. Statement of Points with respect to Which Further Appellate Review is Sought..... 17

V. Why Further Appellate Review is Appropriate.... 18

 1. The Appeals Court Failed to Consider Whether Defendants' Pay Equity Review was Reasonable in Detail and Scope. 19

 2. The Appeals Court Misapplied the Summary Judgment Standard 25

 A. Defendants Misapplied the Summary Judgment Standard to Plaintiff's Argument that Defendants Did Not Present Evidence Concerning the Date by Which They Completed the Self-Evaluation..... 25

 B. The Appeals Court Misapplied the Summary Judgment Standard Concerning Whether Defendants' Showed That They Made Reasonable Progress Toward Eliminating Wage Differentials Based on Gender for Comparable Work..... 26

VI. CONCLUSION..... 27

VII. SUPPLEMENTAL REQUEST FOR ATTORNEYS' FEES..... 28

CERTIFICATE OF COMPLIANCE..... 29
 CERTIFICATE OF SERVICE..... 30
 ADDENDUM OF APPLICANT LAUREN WOODWARD..... 31
 ADDENDUM TABLE OF CONTENTS..... 32

TABLE OF AUTHORITIES

CASES:

Adams v. Schneider Electric USA,
 492 Mass. 271, 274 (2023). 8, 10, 16, 18

Bulwer v. Mount Auburn Hosp.,
 473 Mass. 672, 683 (2016). 16

Dennis v. Kaskel,
 79 Mass. App. Ct. 736, 740-741 (2011) . . . 6, 12

Flesner v. Technical Communications Corp.,
 410 Mass. 805, 809 (1991) 15

Gurry v. Cumberland Farms, Inc.,
 406 Mass. 615, 624 (1990). 15, 17

Stonehill College v. Mass. Comm’n Against
 Discrimination,
 441 Mass. 549, 563 (2004) 17

Woodward v. Massachusetts Department of Public Health et
 al.,
 No. 24-P-1086 (Dec. 31, 2025). 11

STATUTES AND OTHER AUTHORITIES:

G. L. c. 149, § 105A. 6

G. L. c. 149, § 105A(b) 5, 18

G. L. c. 149, § 105A(d). Passim.

G. L. c. 151B, § 4 6

G. L. c. 151B § 4(1) 5, 18

Mass. R. App. P. 27.1. 6

OTHER MATERIALS

Office of the Attorney General - An Act to Establish
Pay Equity: Overview and Frequently Asked Questions,
<http://www.mass.gov/doc/ago-equal-pay-act-guidance-5-2-18/download>. 20

I. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

The Massachusetts Equal Pay Act ("MEPA") provides for remedies to the extent that an employer pays an employee a lower rate than an employee doing comparable work on the basis of gender. G. L. c. 149, § 105A(b). Chapter 151B likewise prohibits sex discrimination in the payment of compensation. G. L. c. 151B, § 4(1). An employer is entitled to an affirmative defense to claims under both statutes if, within the three years preceding the filing of an action, it has conducted a good faith self-evaluation of its compensation practices and has made reasonable progress toward rectifying any identified pay disparities -- but it partially loses that immunity if its self-evaluation is not reasonable with respect to its detail and scope. G. L. c. 149, § 105A(d).

No Supreme Judicial Court decision has yet interpreted the affirmative defense. The decision below appears to be the only Appeals Court decision to address the matter. However, the decision below threatens to reduce the protections afforded to Massachusetts employees by the MEPA.

This is a case where Defendants affirmatively favored men when determining salary level and paid Plaintiff far less than it paid less-qualified men in the same position. Then, when doing a self-evaluation of their pay practices, Defendants did not even identify Plaintiff as having a

potential pay disparity. Despite all of this, the decision below allowed Defendants the protection of the affirmative defense, severely weakening MEPA's anti-discrimination protections far below those that are contemplated by the statute. Thus, We ask that this court consider, on first impression, whether a vague, poorly conducted self-examination, with a blind spot to subjectivity and overt bias, immunizes an employer from paying a woman far less than less qualified males.

Accordingly, Plaintiff-Appellant Lauren Woodward respectfully makes this Application pursuant to Mass. R. A. P. 27.1, based upon substantial reasons affecting the public interest and the interests of justice, for Further Appellate Review of the Massachusetts Appeals Court decision in Woodward v. Massachusetts Department of Public Health et al., No. 24-P-1086 (Dec. 31, 2025) (the "Decision Below"), attached hereto at Addendum, pp. 33-45. Further Appellate Review of the Decision Below by this Court would provide more clarity and security to Massachusetts employees, employers, and courts alike.

II. STATEMENT OF PRIOR PROCEEDINGS

Plaintiff filed this civil action setting forth claims under G. L. c. 149, § 105A and G. L. c. 151B, § 4 on June 24, 2020. Defendants-Appellees moved for summary judgment. The Superior Court granted

Defendant-Appellees' motion for summary judgment.

Woodward timely appealed that decision.

The Appeals Court heard argument on September 3, 2025 and rendered its decision on December 31, 2025, affirming the Superior Court's decision. Woodward now applies for Further Appellate Review.

III. Short Statement of Facts Relevant to the Appeal

1. Defendants Adopted Policies and Practices Aimed at Hiring More Men.

Defendant Board of Registration in Nursing (BORN) receives complaints about nurses, assigns investigators to conduct investigations of those complaints and draft reports, and the Board ultimately rules on them. Record Appendix (R.A.) 258-259, 313. Those conducting investigations include those with the title Compliance Officer III/Nursing Investigators (CO III).

In the job requirements for the CO III position, dated September 30, 2013, Defendants stated that candidates that are to investigate the professional conduct of nurses needed to have "experience as a health care professional and "experience in the areas of patient safety, process improvement, systems dynamics and systems re-engineering also" at hire.

R.A. 262-263, 647-649. In the job requirements dated August 25, 2014, Defendants also required "experience as a licensed professional in the field of Nursing," and preferred "experience in the areas of patient safety, process improvement, systems dynamics and systems re-engineering" at hire. R.A. 263, 434, 651. Defendants also required candidates to have a valid Massachusetts license as a registered nurse or licensed practical nurse and also required the candidate to, "be well versed and have experience in the field of Nursing." R.A. 263-264, 267, 333.

Plaintiff Lauren Woodward started working at BORN as a CO III in 2015. R.A. 51. Marjorie Campbell served as Plaintiff's supervisor. R.A. 171-173, 249, 322-323, 333, 650-651. After Defendants hired Plaintiff, they removed the requirements for experience in nursing and a current valid Massachusetts license as a registered nurse or licensed practical nurse. R.A. 314. Instead, Defendants listed "experience as a licensed health care professional," as merely a "preferred" qualification. R.A. 173-174, 249, 268, 647-653.

BORN's Executive Director Lorena Silva changed nursing experience and licenses from requirements to

preferences because she sought to hire more non-nurses with investigative experience. She also changed the requirements in an effort to hire more men, by her own account, "[b]ecause there's less drama with males." R.A. 176, 179-180, 314. As BORN's Executive Director, Ms. Silva had authority over the candidate-screening process; she could select candidates to interview, participate as an interview panelist if she chose to, and make recommendations about whom to hire. R.A. 255-256. She also had direct oversight over Ms. Campbell, who as investigation supervisor, conducted interview panels and guided hiring decisions. Id., 314-315. Consistent with Ms. Silva's wishes, BORN began hiring more male CO IIIs. R.A. 180, 314, 317.

In 2019, when Anthony Pettigrew interviewed for the CO III role, the interview panel gave a female candidate with experience as a nurse a higher score. R.A. 179-180, 324-327, 686, 688, 690. However, Defendants wanted to hire a man, and Ms. Silva instructed the interview panel, which included Plaintiff, to alter their evaluations to give Mr. Pettigrew, rather than the woman with nursing experience, the highest score. R.A. 179-180, 324-327, 686, 688, 690-694.

2. Defendants Decided to Pay Messrs. Pettigrew and Riggs Higher Salaries Than Plaintiff Without Justification.

In 2019 and 2020, Defendants hired two male CO IIIs -- Mr. Pettigrew and Edward Riggs. Defendants decided to pay them higher salaries than they paid to Plaintiff, who had been serving in the same role since 2015. R.A. 608-611. Defendants claim they determined employee pay in accordance with a salary schedule, in which each position belongs to a certain "grade" and within that grade employees progress through "steps" as they complete years of service in that particular position. R.A. 212-213. Defendants' employees begin on different steps at hire based on prior experience. R.A. 280. However, Defendants' system for crediting prior experience to determine placement on the salary schedule is highly subjective. R.A. 271. Defendants claim that they consider whether the hire worked full-time or part-time and the amount of work time the hire spent investigating. R.A. 266-267. To this end, Defendants claim that they review resumes to see if they consider the activities described to be investigative. R.A. 271. Defendants' witness Mr. St. Laurent admitted that there is a level of subjectivity to this analysis. Id.

Prior to becoming a nurse, Plaintiff worked for the Town of Danvers as a full-time special police officer for two to three years. R.A. 166-167. She attended the police academy and conducted details, including investigating thefts in Danvers and at Hunt Hospital. Id. At the time of her hire, Defendants credited Plaintiff for five of her twelve years of experience as a nurse and five years' credit for her work as a paralegal. R.A. 242, 272. Defendants claimed that they discounted Plaintiff's nursing experience because it was not full-time experience. R.A. 270-271. Defendants also failed to give Plaintiff credit for her work as a special police officer for the Town of Danvers, purportedly because her resume did not provide a "time range," that indicated if she worked as full-time or part-time police officer. R.A. 249, 266-267, 270-272, 637-641. There is no evidence that Defendants sought clarification from Plaintiff for the alleged ambiguities that caused them to reduce her credit (and therefore her salary). R.A. 272.

However, Defendants awarded Mr. Riggs' full-time credit for being an EMT even though his resume also did not indicate whether he worked as an EMT part-time

or full-time. R.A. 611, 637-641. Defendants credited Mr. Pettigrew for drug diversion investigations in health care settings they believed he had performed as a DEA agent despite the fact that his resume did not state that he actually performed these investigations. R.A. 610, 637-641. In fact, Mr. Pettigrew testified that he did not investigate drug diversions while employed by the DEA. R.A. 610, 637-641, 660-661.

When BORN first hired her, Plaintiff tried to negotiate a higher salary, but Defendants refused to increase their initial offer. R.A. 316. During a pay review that Plaintiff requested, Mr. St. Laurent told Plaintiff that she did not need a lot of money because her husband was rich and that, as a result, he offered her a lower salary. R.A. 177, 316. While Mr. St. Laurent denied commenting on how much money Plaintiff's husband made, Ms. Campbell testified that Plaintiff told her about Mr. St. Laurent's comment at the time the conversation between Plaintiff and Mr. St. Laurent took place. R.A. 316, 329.

Despite her lower pay, supervisors and colleagues consider Plaintiff to be one of the best CO IIIs, out of seventeen total, employed at any point between 2015 and 2023. R.A. 219-220, 260, 315, 321, 323, 360-361,

663-664. She achieved the highest annual case closeout rate in 2019, 2020 and 2021. R.A. 260. Plaintiff's supervisor and the male comparators, hired after her due to their investigative experience, considered Plaintiff more qualified and more skilled than they were. R.A. 260, 315, 321, 323, 360-361, 663-664. Both Mr. Pettigrew and Mr. Riggs turned to Plaintiff for assistance with basic nursing concepts; neither male employee understood the nursing process or medical records at their hire, and they required more oversight. R.A. 145, 185, 187-188, 320-321, 324, 359, 663, 686-687, 695.

Plaintiff, Mr. Pettigrew, and Mr. Riggs all worked as CO IIIs within BORN in the same office. R.A. 143-144. They had the same duties and responsibilities. Id.; R.A. 317-318, 360, 663. Everything about their jobs was identical, except for their pay. R.A. 317-318, 360, 663. Mr. Pettigrew and Mr. Riggs received much higher initial offers than Plaintiff. R.A. 608-611. She received a starting annual salary of \$65,231.28, while Mr. Pettigrew received a starting salary of \$82,763.46 and Mr. Riggs received a starting salary of \$87,829.82. R.A. 608-611. Their initial salaries exceeded her salary at

the time of their hire, when she had already been on the job for three years. When Mr. Pettigrew started, Plaintiff's salary was \$74,851 and when Mr. Riggs started, she was earning \$81,140.54. R.A. 317, 608-611.

3. Defendants' Self-Evaluation Did Not Identify Plaintiff as Even Potentially Having an Impermissible Pay Disparity.

Defendants began conducting a Pay Equity Self-Evaluation in November 2019. The Executive Office of Health and Human Services sent out guidelines to Defendants in October and November 2019 issuing instructions for carrying out the self-evaluation. R.A. 612-625.

Notably, the initial agency review of pay practices had three criteria for identifying employees with potentially impermissible pay disparities: (1) whether both men and women are in the job; (2) whether there are any differences in pay between the men and women in the job; and (3) whether the job is truly comparable. R.A. 615. Where all three answers were in the affirmative, Defendants were supposed to inspect whether the pay variation was permissible because of: seniority, merit, quality/quantity of production, geographic location, education or

experience reasonably related to the position, or travel requirements of the job. R.A. 616-617.

Defendants' 30(b)(6) witness Veronica Gjino testified that the self-evaluation began "at some point" after the augmented pay-equity law went into effect in 2018, that agencies within the Executive Office of Health and Human Services began undertaking tasks as part of the self-evaluation by November 6, 2019, and that the deadline for Defendants to identify impermissible disparities in pay based on sex/gender was November 25, 2019; however, Ms. Gjino did not know whether Defendants actually completed that task by the deadline. R.A. 427-429, 431-433. Ms. Gjino subsequently testified that the DPH had not completed identifying all employees subject to an impermissible pay disparity based on their gender by November 27, 2019, after their deadline. R.A. 431, 612-621, 626-627.

Defendants' analysis did not identify Plaintiff, Mr. Pettigrew, or Mr. Riggs among the employees of differing genders in comparable positions who were subject to a potentially impermissible pay disparity. R.A. 431, 626-627. Ms. Gjino, and the Defendants' self-review documents, stated that once Defendants had

identified all employees subject to an impermissible pay disparity based on their sex/gender, Defendants were supposed to confer with a budget analyst if they lacked sufficient funds to implement corrective salaries. R.A. 432, 626-627. After identifying such persons, Defendants reported that they lacked sufficient funds to implement corrective salaries; however, Ms. Gjino was unsure if they conferred with a budget analyst, whether they ever rectified the salary discrepancies, and if so, when that occurred. R.A. 432-433, 626-627. Defendants also failed to state when any upward salary adjustment for the identified persons occurred. R.A. 432-433, 626-627.

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IV. Statement of Points with respect to Which Further Appellate Review is Sought

1. Did the Appeals Court err by failing to decide that the Defendant's review was not in good faith or not reasonable in detail or scope as provided for in G. L. c. 149, § 105A(d)?

2. Did the Appeals Court misapply the summary judgment standard by ignoring the evidence Plaintiff offered to support her position?

V. Why Further Appellate Review is Appropriate.

This application presents an issue of first impression for this Court which goes to the heart of Massachusetts citizens' rights to be free from discrimination. Stonehill College v. Mass. Comm'n Against Discrimination, 441 Mass. 549, 563 (2004) (referring to "the broader public interest in eradicating systematic discrimination"). MEPA provides penalties for employers with discriminatory pay practices. See G. L. c. 149, § 105A (b). Chapter 151B likewise prohibits discrimination in compensation based on sex. G. L. c. 151B, § 4(1). However, MEPA establishes an affirmative defense to both causes of action for employers who undertake a good faith self-evaluation and reasonably remediate their discriminatory pay practices. Id. at § 105A (d). The defense contains a blind spot, and continues to permit liability, if the self-evaluation was not "reasonable in detail and scope." Id. No Massachusetts Court has explicated the requirements of MEPA's affirmative defense prior to this action. But the Decision Below largely avoided the substance of MEPA, focusing instead on the particularities of a Mass. R. Civ. P. 30(b)(6) deposition notice and the alleged

deficiencies of Plaintiff's discovery practices. See Addendum, pp. 40-45. The result was a decision that misapplied SJC precedent and left Massachusetts employees, employers, and courts in a continued state of confusion concerning this powerful statute.

1. The Appeals Court Failed to Consider Whether Defendants' Pay Equity Review was Reasonable in Detail and Scope.

The MEPA provides that an employer has an affirmative defense to MEPA and c. 151B pay discrimination cases if the employer had completed a "good faith" self-evaluation of its pay practices within the last three years (along with other requirements). G. L. c. 149, § 105A(d), ¶ 1. However, the affirmative defense does not completely immunize those employers who otherwise satisfy the defense, but "cannot demonstrate that the evaluation was reasonable in detail and scope." *Id.* at § 105A(d), ¶2.

The Attorney General's office also offered guidance as to when a self-evaluation was reasonable in detail and scope, which states that it will "depend upon the size and complexity of an employer's workforce" and that "relevant factors include whether the evaluation includes a reasonable number of jobs

and employees; whether the evaluation takes into account all reasonably relevant and available information; and whether the evaluation is reasonably sophisticated in its analysis of potentially comparable jobs, employee compensation, and the application of the six permissible reasons for pay disparities discussed in Section 5 of [the Attorney General's] guidance. Office of the Attorney General - An Act to Establish Pay Equity: Overview and Frequently Asked Questions, <http://www.mass.gov/doc/ago-equal-pay-act-guidance-5-2-18/download>.

Plaintiff offered the following evidence that, taken together, would entitle a jury to find that Defendants' self-evaluation was not reasonable in detail and scope: (1) Plaintiff and a male colleague worked in positions with the same title (R.A. 143-144); (2) Defendants paid that male colleague with the same title substantially more money than it paid Plaintiff (R. A. 219-220, 260, 315, 321, 323, 360-361, 637-641, 663-664); (3) Defendants eliminated medical and nursing qualification requirements precisely to increase the representation of male CO IIIs (R.A. 176, 179-180, 314); (4) the fact that men were credited for

full-time investigative work based on ambiguous resumes which made no such representations, while Plaintiff was not so credited and was never consulted (R.A. 249, 266-267, 270-272, 610-611, 637-641, 660-661); (5) BORN had overtly manipulated the CO III hiring process to favor a male candidate, and another male candidate was hired soon after to conduct these nursing investigations (R.A. 179-180, 324-327, 686, 688, 690-694); (6) Plaintiff had complained about her pay disparity prior to Defendants' MEPA self-evaluation (R.A. 711-714); (7) Plaintiff and her colleague had very similar qualifications, (R.A. 249, 266-267, 270-272, 610, 637-641, 660-661); (8) Plaintiff's performance in the role was better than her male colleague's performance in the role, as they had little to no nursing or medical expertise, despite the fact that they were expected to investigate the professional conduct of nurses (R.A. 219-220, 260, 315, 321, 323, 360-361, 663-664); (9) the guidelines published by EOHHS stated that employees of different genders in similar positions with a pay disparity should be identified as having a potentially impermissible pay disparity (R.A. 615); and (10) Defendants did not identify Plaintiff as having a

potentially impermissible pay disparity (R.A. 431, 626-627).

This evidence creates a genuine dispute of material fact -- that whatever analysis that Defendants conducted, it was neither in good faith nor was it reasonable in detail or scope to uncover disparate pay.¹ G. L. c. 149, § 105A(d); Dennis v. Kaskel, 79 Mass. App. Ct. 736, 740-741 (2011). The dispute of fact is doubly contested, given that the burden of proving that the evaluation was in good faith, or was reasonably detailed falls upon the employer as an affirmative defense. G. L. c. 149, § 105A(d), ¶¶ 1-2. All of the information raised by Plaintiff to dispute the salient facts were well-known by Defendants at the time. R. A. 219-220, 260, 315, 321, 323, 360-361, 663-664. Defendants' failure to identify Plaintiff as having a potentially impermissible pay disparity and conduct a closer review of the equity of her pay would indicate that Defendants either did not include enough information

¹ In contrast to the Appeals Court's statement that Ms. Woodward's failure to supplement her answer to an interrogatory left the Court without a record from which they could find against the Defendants, all of the evidence on which Plaintiff relies is fully supported by the record and was well-known to Defendants. See Addendum at 42-43.

in their review of their employees' pay, or look at that information in enough detail. From the evidence Plaintiff presented to the Court, a reasonable jury could conclude that Defendants' self-evaluation was not reasonable in detail or scope, or was not conducted in good faith.

Plaintiff's burden at summary judgment is to "point to specific material in the record that could lead a jury to doubt" that Defendants carried out their self-evaluation in good faith or without reasonable detail. Adams v. Schneider Electric USA, 492 Mass. 271, 274 (2023). However, the Appeals Court flipped this standard on its head, placing the burden of persuasion on Plaintiff and the burden of production on Defendants. See Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 683 (2016) (the burden of persuasion at summary judgment remains with the moving parties). Under the correct standard, Plaintiff offered more than enough evidence to maintain her right to a trial.

Whether the self-evaluation was "reasonable" in terms of its detail or scope, or whether it was conducted in good faith, are quintessentially questions for the jury. See Flesner v. Technical

Communications Corp., 410 Mass. 805 at 809 (1991);
Gurry v. Cumberland Farms, Inc., 406 Mass. 615, 624
(1990). Here the Defendants' policy indicated they
should have identified Plaintiff as having a
potentially impermissible pay disparity and that they
failed to do so. R.A. 431, 615, 626-627. The
evaluation failed to consider whether the criteria was
manipulated to favor males; it failed address the fact
that nursing experience was undervalued for those
conducting nursing investigations; it failed to
address the subjective nature of whether experience
was deemed by BORN to be "investigative" in nature and
the arbitrary way it determined the experience was
full or part-time.

These enormous blind spots left Defendants unable
to flag even a potential issue with Plaintiff being
disparately paid. In Massachusetts, an employer's
failure to live up to its own policy indicates an
absence of good faith. See Bulwer, 473 Mass. 672,
687-88 (2016) ("[T]here is evidence that the
defendants did not follow their written [due process]
procedures in deciding to terminate the plaintiff's
employment. A failure to follow established procedures
or criteria may support a reasonable inference of

intentional discrimination.”). With this evidence that Defendants’ evaluation failed to live up to a sufficient level of competence and failed to uncover this stark example of pay inequity, a reasonable jury could find a lack of good faith, or at the very least, failure to institute a self-evaluation that was reasonable in detail or scope.

2. The Appeals Court Misapplied the Summary Judgment Standard

A. Defendants Misapplied the Summary Judgment Standard to Plaintiff’s Argument that Defendants Did Not Present Evidence Concerning the Date by Which They Completed the Self-Evaluation.

To benefit from the defense in an action, the employer was required to complete its self-evaluation within three years of the date the action commenced. In this case, the statute required Defendant to complete its evaluation on or before June 24, 2020. Defendants’ main piece of evidence for establishing that Defendants completed the self-evaluation prior to that date was the Cormier Affidavit, wherein Ms. Cormier stated that Defendants completed their MEPA self-evaluation in accordance with the MEPA Self-

Evaluation Guidelines.² See Addendum at pp. 39-40.

But Plaintiff offered sufficient evidence to show that the Cormier Affidavit was not credible.

Defendants' MEPA Self-Evaluation Guidelines stated that all spreadsheets were supposed to be submitted by noon on November 25, 2019. R.A. 614. But the record contains an email evidencing that at least spreadsheets were still being submitted on November 27, 2019, two days after the deadline. Id.; R.A. 626-627. A jury would be allowed to find that the Cormier Affidavit is not credible due to this contradiction. See Adams, 492 Mass. at 288-89. Accordingly, the Appeals Court was required to find that Plaintiff is entitled to a trial on this issue.

B. The Appeals Court Misapplied the Summary Judgment Standard Concerning Whether Defendants' Showed That They Made Reasonable Progress Toward Eliminating Wage Differentials Based on Gender for Comparable Work.

One aspect of the self-evaluation defense requires the employer to show that it has made "reasonable progress . . . towards eliminating wage differentials based on gender for comparable work"

² Plaintiff notes that Defendants only submitted the Cormier Affidavit in support of their motion for summary judgment.

uncovered in its evaluation. G. L. c. 149, § 105A(d), ¶ 1. Defendants' own document stated that as part of the self-evaluation, they were supposed to consult with a budget analyst in order to implement the recommended salary increases. See R.A. 626-627. Defendants offered no evidence that any conferral took place. The record also indicates that Defendants did not make any pay increases prior to Plaintiff filing this action -- approximately seven months after Defendants claim they completed the self-evaluation. See R.A. 432-433, 626-627. From those facts, a reasonable jury could conclude that Defendants did not make reasonable progress toward correcting the pay disparities they identified by the time Plaintiff filed this action. The Appeals Court was required to find that Defendants were not entitled to summary judgment.

VI. CONCLUSION

For the foregoing reasons, this Court should grant further appellate review of the Decision Below.

VII. SUPPLEMENTAL REQUEST FOR ATTORNEYS' FEES

Should this Petition for Further Appellate Review be successful, Plaintiff requests an award of attorneys' fees and costs for work performed, pursuant to

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure I, William Petrone, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. App. P. 27.1 because it is produced in the monospaced font Courier New at size twelve, ten characters per inch, and contains ten or fewer total non-excluded pages, with double-spaced text in the relevant section.

/s/ William E. Petrone

Dated 1/21/2026

CERTIFICATE OF SERVICE

Pursuant to Mass. R.A.P. 13(e), I hereby certify, under the penalties of perjury, that on January 21, 2026 I have made service of this Brief and Addendum upon the attorney of record for each party, or if the party has no attorney, then I made service directly to the self-represented party, by the electronic filing system on:

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ADDENDUM TABLE OF CONTENTS

Appeals Court Rule 23.0 Memorandum and Order Dated
December 31, 2025
("Order").33

Appeals Court Order dated December 31, 2025.46

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

24-P-1086

LAUREN WOODWARD

vs.

BOARD OF REGISTRATION IN NURSING & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, Lauren Woodward, "is a female employed as a Compliance Officer III" (CO III) by the Massachusetts Department of Public Health's (DPH) Board of Registration in Nursing (BORN).² She filed an action in the Superior Court alleging that the defendant violated the Massachusetts Equal Pay Act (MEPA), G. L. c. 149, § 105A, and the Massachusetts Fair Employment Practices Act, G. L. c. 151B. The defendant moved for summary judgment arguing, inter alia, that it conducted a good faith self-evaluation of possible gender-based pay disparities and is

¹ Massachusetts Department of Public Health.

² BORN is a component of DPH. See G. L. c. 13, § 9 (a); G. L. c. 112, § 1. We refer to them collectively as "the defendant" herein.

statutorily immunized from the plaintiff's claims under the defense set forth in G. L. c. 149, § 105A (d). Agreeing with the Superior Court judge that the summary judgment record reveals no genuine issue of material fact regarding whether the defendant is entitled to this defense, we affirm.

Background. 1. Factual background. We summarize the undisputed material facts in the summary judgment record. The defendant hired the plaintiff as a CO III in 2015. The duties of a CO III at DPH involve investigating complaints made against nurses licensed in Massachusetts. At the time that the plaintiff was hired in or around 2015, the Commonwealth's human resources division (HRD) guidelines required the defendant to calculate the number of years of comparable experience that the plaintiff (or any hire) had to determine "the step at which each person would be placed upon hire, which would in turn determine their annual salary." The plaintiff was credited with ten years of comparable experience from her prior work as a nurse and paralegal, and the defendant recommended that the plaintiff's "salary start at a grade 13, step 6, for a starting annual salary of \$65,241.28."

In 2019 and 2020, the defendant hired two male candidates, Anthony Pettigrew and Edward Riggs, to CO III positions. The defendant determined that Pettigrew possessed over thirty years

of comparable experience based on his prior work as a Federal investigator for the Drug Enforcement Administration. The defendant also noted that Pettigrew had a bachelor's degree in criminal justice and a master's degree in service management and recommended that his "salary start at a grade 13, step 12, for an annual salary of \$82,763.46." Similarly, the defendant determined that Riggs possessed over twenty-five years of comparable experience based on his prior work in law enforcement as a police officer. The defendant also noted that Riggs had started his career in the National Guard and as a military police officer, held a bachelor of science degree in social work, had an emergency medical technician certificate and had conducted clinical quality control investigations in that role, and recommended that his "salary start at grade 13, step 14, for an annual salary of \$87,829.82."³ The plaintiff, Pettigrew, and Riggs were each entitled to annual salary increases under their collective bargaining agreement.

2. MEPA amendment. In 2016, MEPA was amended to add an affirmative defense to liability under G. L. c. 149, § 105A (b), and G. L. c. 151B, § 4. See St. 2016, c. 177, § 2 (effective

³ It is undisputed that DPH is required to follow HRD's hiring guidelines, but the plaintiff maintains that there is a material dispute as to whether the defendant indeed followed those guidelines in these instances.

July 1, 2018). Consistent with this new law, in 2019, the defendant conducted a self-evaluation of all bargaining unit positions at DPH to determine whether there existed any impermissible pay disparities under MEPA among employees of different genders performing comparable work. At this time, HRD circulated a ten-page document detailing the timeframes and guidelines according to which a self-evaluation was to proceed.⁴ "This self-evaluation consisted of an initial, high-level review performed by HRD, followed by a more detailed review conducted [by the defendant and other agencies] when the high-level review showed that employees of different genders, who may be in

⁴ The HRD self-evaluation guidelines provided, *inter alia*, that between October 18 and November 5, 2019, HRD would perform a preliminary analysis using aggregated data to identify employees for agency review; by November 6, 2019, the Executive Office of Health and Human Services (EOHHS), "the Secretariat within which [the defendant] sits and which has the ultimate authority with respect to [the defendant's] hiring decisions," would send out communications and HRD spreadsheets to agencies (including the defendant); between November 6 and November 25, 2019, agencies (including the defendant) would conduct their self-evaluation; by November 25, 2019, the defendant and other EOHHS agencies would send their "[s]elf-[e]valuation spreadsheets" to the classification and compensation unit at EOHHS; between November 25 and December 2, 2019, EOHHS human resources would review these spreadsheets and submit them to HRD for review; between December 2 and December 11, 2019, HRD would review the self-evaluation spreadsheets and compile data; and by December 12, 2019, HRD would provide a report to the Executive Office of Administration & Finance.

comparable jobs, were being paid differently."⁵ The defendant's self-evaluation revealed seven persons⁶ employed by the defendant who were subject to potentially impermissible pay disparities, and as a result of the self-evaluation, these employees' salaries were adjusted upwards. The defendant's MEPA self-evaluation did not find any impermissible pay disparities between the plaintiff and any of the male CO IIIs in BORN.

3. The plaintiff's complaint. On June 22, 2020, the plaintiff filed a complaint in the Superior Court alleging violations of MEPA and G. L. c. 151B. The defendant filed an answer and asserted various affirmative defenses, including the affirmative defense set forth in G. L. c. 149, § 105A (d), to claims brought under G. L. c. 149, § 105A (b), and G. L. c. 151B, § 4. The defendant subsequently moved for summary judgment and, following a hearing, a Superior Court judge

⁵ The plaintiff admitted for purposes of summary judgment that the self-evaluation project undertaken by HRD and Commonwealth agencies was supposed to have been conducted in the fashion described in note 4, supra, but disputed that the project "identified all employees of different genders in comparable jobs subject to a pay discrepancy."

⁶ The defendant initially identified eight employees who may have been subject to impermissible pay disparities but subsequently determined that one of the individuals had been receiving the correct salary and thus removed that employee from the list.

(motion judge) determined that the defendant was entitled to the affirmative defense outlined in MEPA and allowed the motion.

Discussion. We review a grant of summary judgment de novo to determine whether, viewing the evidence in the light most favorable to the nonmoving party, "all material facts have been established and the moving party is entitled to judgment as a matter of law" (citation omitted). Casseus v. Eastern Bus Co., 478 Mass. 786, 792 (2018). See Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002). See also Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

G. L. c. 149, § 105A (d), provides in relevant part:

"An employer against whom an action is brought alleging a violation of subsection (b) and who, within the previous 3 years and prior to the commencement of the action, has both completed a self-evaluation of its pay practices in good faith and can demonstrate that reasonable progress has been made towards eliminating wage differentials based on gender for comparable work, if any, in accordance with that evaluation, shall have an affirmative defense to liability under subsection (b) and to any pay discrimination claim under section 4 of chapter 151B. For purposes of this subsection, an employer's self-evaluation may be of the employer's own design, so long as it is reasonable in detail and scope in light of the size of the employer, or may be consistent with standard templates or forms issued by the attorney general."

Consistent with this provision, in November 2019, the defendant, in conjunction with extensive guidance from HRD, administered and completed the self-evaluation described, supra. See note 4, supra. As discussed above, that process involved an initial

high-level review by HRD, followed by a more detailed review conducted by the defendant, and ultimately, because of the MEPA self-evaluation, resulted in the identification of seven employees with potentially impermissible pay disparities, and an upward salary adjustment for those employees based on the salaries of comparable employees of different genders.

Here, the plaintiff does not dispute that the defendant conducted a self-evaluation of its pay practices in November 2019. Rather, the plaintiff contends that the defendant's self-evaluation was not completed within three years of the present action; was not conducted in good faith; and did not demonstrate that reasonable progress had been made towards eliminating impermissible pay disparities. The arguments are unavailing.

Initially, there is no merit to the plaintiff's claim that the self-evaluation was not completed within three years of the present action. To the contrary, the summary judgment record, including but not limited to e-mail correspondence, spreadsheets, HRD self-evaluation guidelines, and the affidavit of Carol Cormier,⁷ a human resources business partner with EOHHS,

⁷ The Cormier affidavit confirms, inter alia, that the defendant timely completed the self-evaluation. We note that the plaintiff did not move to strike the Cormier affidavit, and did not file any countervailing affidavit. See, e.g., Adams v. Schneider Elec. USA, 492 Mass. 271, 288 (2023) ("court must determine judgment as a matter of law based on all uncontested evidence, that is, evidence favoring the nonmovant and

demonstrates that the defendant's self-evaluation was completed by late November 2019, several months prior to, and within three years of, the filing of the present action on June 22, 2020. Indeed, on November 27, 2019, the defendant provided Veronica Gjino, the EOHHS director of classification and compensation, with a revised spreadsheet delineating the results of the defendant's self-evaluation. Furthermore, there is no admissible record evidence that supports the plaintiff's conclusory suggestion that the self-evaluation was not timely completed. The plaintiff insists that the deposition testimony of Gjino, the defendant's deposition designee pursuant to Mass. R. Civ. P. 30 (b) (6), as appearing in 489 Mass. 1401 (2022), created a dispute of material fact because Gjino was unable to "provide the date [the defendant] purportedly completed the self-evaluation." This argument fails for two independent reasons. First, Gjino was not provided adequate notice within the meaning of rule 30 (b) (6) that the MEPA self-evaluation was an area of inquiry at her deposition. Indeed, the rule 30 (b) (6) notice contains no reference to the "affirmative

uncontradicted and unimpeached evidence favoring the movant. Uncontradicted and unimpeached evidence, even from interested witnesses favoring the moving party, is to be considered on summary judgment" [quotations omitted]). See generally Stetson v. Board of Selectmen of Carlisle, 369 Mass. 755, 763 n.12 (1976) (judge may consider even faulty affidavits if no motion to strike).

defense" or to any "self-evaluation" under MEPA.⁸ See Mass. R. Civ. P. 30 (b) (6) (requiring that notice under rule "must describe with reasonable particularity the matters for examination"). See also Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep't of Mental Retardation, 424 Mass. 430, 461 n.30 (1997). Second, Gjino's deposition testimony did not conflict with other evidence in the summary judgment record showing that the defendant had completed the self-evaluation.⁹

Next, the summary judgment record, including the HRD guidelines, e-mail correspondence, spreadsheets, and the Cormier affidavit, demonstrates that the defendant's self-evaluation was

⁸ The references in the rule 30 (b) (6) notice to the plaintiff's requests for a pay equity review and to "[a]ny and all pay equity review requests made to DPH and/or BORN" by their plain language do not provide notice or describe with reasonable particularity anything relating to the affirmative defense or self-evaluation under MEPA. Indeed, the plaintiff's "pay equity request" refers to a review specific to the plaintiff, whereas the MEPA self-evaluation pertains to an agency-wide review of pay equity.

⁹ The plaintiff claims that in her deposition testimony, Gjino contradicted the Cormier affidavit by confirming that the defendant had not completed its review by November 26, 2019. This is not the case. Rather, Gjino merely agreed that "it seems implied" that an e-mail attachment containing the names of the eight individuals initially identified by the MEPA self-evaluation review, see note 6, supra, "was not [the defendant's] final version," of the attachment, but that she "cannot confirm that." Again, viewed in context, Gjino's deposition testimony does not contradict the Cormier affidavit or other evidence in the summary judgment record.

made in good faith.¹⁰ Here again, the plaintiff's conclusory denials do not constitute a sufficient basis to avoid summary judgment. See Halbach v. Normandy Real Estate Partners, 90 Mass. App. Ct. 669, 670-671 (2016). We further note, in this regard, that in response to interrogatory 16, which asks the plaintiff to "describe in detail each and every basis for [the plaintiff's] contention" that the defendant's "'self-evaluation of its pay practices' does not constitute or qualify as an affirmative defense under G. L. c. 149, § 105A," the plaintiff objected and further responded that "discovery is ongoing" and

¹⁰ The Office of the Attorney General has promulgated guidance regarding the amendments to G. L. c. 149, § 105A. See Office of the Attorney General, An Act to Establish Pay Equity: Overview and Frequently Asked Questions (updated March 1, 2018), www.mass.gov/files/documents/2018/05/02/AGO%20Equal%20Pay%20Act%20Guidance%20%285-2-18%29.pdf. This guidance includes an explanation of what constitutes a good faith self-evaluation. See id. at § 10 ("A good faith self-evaluation is one that an employer conducts in a genuine attempt to identify any unlawful pay disparities among employees performing comparable work. This good faith requirement applies to both an employer's analysis of which jobs are comparable and to its analysis of pay differentials. A self-evaluation that is conducted so as to achieve certain pre-determined results [i.e., to find no disparities] or to justify known disparities likely will not qualify as good faith"). See also Garcia v. Steele, 492 Mass. 322, 326 (2023) ("It is a fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning" [quotations and citation omitted]); Black's Law Dictionary 832 (12th ed. 2024) ("good faith" is "state of mind consisting in . . . honesty in belief or purpose, . . . faithfulness to one's duty or obligation, . . . [or] absence of intent to defraud or to seek unconscionable advantage").

reserved the right to supplement or amend her answers to "this interrogatory." There is no indication that the plaintiff did so. Thus, we are left with a record on which the plaintiff declined or otherwise failed to present evidence or provide a substantive response explaining how and why the MEPA affirmative defense did not apply to the present circumstances. Where the plaintiff has not produced evidence sufficient to create a genuine dispute of material fact regarding the good faith element of the affirmative defense, we discern no error in the entry of summary judgment. See Le Fort Enters., Inc. v. Lantern 18, LLC, 491 Mass. 144, 149 (2023) (nonmoving party required to produce evidence sufficient to create genuine dispute of material fact).¹¹

Finally, the summary judgment record contains abundant evidence supporting the defendant's contention that it made reasonable progress towards eliminating wage differentials based on gender as a result of the self-evaluation. This evidence includes the conducting and completion of the process delineated by HRD and implemented by and within HRD, EOHHS, and the

¹¹ So far as the summary judgment record before us shows, discovery in the present case focused on the underlying claims of discrimination and MEPA violation, and not on the affirmative defense provided under G. L. c. 149, § 105A (d). On a different record the applicability of this affirmative defense might well be in dispute. However, we are limited to the record before us.

defendant; the identifying of the seven individuals who were subjected to potentially impermissible pay disparities; and the upward salary adjustment for those individuals to correct those potentially impermissible pay disparities. To counter this evidence, the plaintiff again cites to the Gjino deposition wherein Gjino testified to the effect that she was unsure whether the defendant had ever rectified the salary discrepancies, and if so, when that occurred. This argument fails. As discussed supra, the MEPA affirmative defense and self-evaluation were not topics for which notice was provided under rule 30 (b) (6). Furthermore, Gjino's testimony merely described her lack of knowledge, and did not contradict other undisputed evidence in the summary judgment record demonstrating that the salary adjustments had indeed occurred.

In short, the defendant satisfied its burden of showing that within the previous three years and prior to the commencement of the present action, it had completed a self-evaluation of its pay practices in good faith and demonstrated that "reasonable progress has been made towards eliminating wage differentials based on gender for comparable work, if any, in accordance with that evaluation." G. L. c. 149, § 105A (d).¹²

¹² Where we affirm the allowance of summary judgment on the application of the MEPA affirmative defense, we do not reach the

Therefore, summary judgment properly entered for the defendant.^{13,14}

Judgment affirmed.

By the Court (Neyman,
Ditkoff & Englander, JJ.¹⁵),

A handwritten signature in blue ink that reads "Paul Little". The signature is written in a cursive, slightly slanted style.

Clerk

Entered: December 31, 2025.

underlying substantive claim regarding the plaintiff's pay disparity.

¹³ The plaintiff's request for attorney's fees is denied.

¹⁴ We acknowledge the amicus brief filed by the Massachusetts Employment Lawyers Association and the Women's Bar Association of Massachusetts.

¹⁵ The panelists are listed in order of seniority.

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 24-P-1086

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Pending in the Superior

Court for the County of Suffolk

Ordered, that the following entry be made on the docket:

Judgment affirmed.

By the Court,

 , Clerk

Date December 31, 2025.
