

HOUSE No. 4109

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 3, 2023.

The committee on Ways and Means, to whom was referred the Bill relative to salary range transparency (House, No. 4100), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4109).

For the committee,

AARON MICHLEWITZ.

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to salary range transparency.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 9 of the General Laws is hereby amended by adding the following
2 section:-

3 Section 32. (a) As used in this section, the words “annual report”, “covered employer”,
4 “EEO-1 data report”, “EEO-3 data report”, “EEO-4 data report”, “EEO-5 data report” and “wage
5 data report” shall, unless the context clearly requires otherwise, have the same meanings as
6 defined in section 105E of chapter 149.

7 (b)(1) Annually, not later than April 1, the state secretary shall provide to the executive
8 office of labor and workforce development the EEO-1 data reports of each covered employer for
9 the prior calendar year.

10 (2) Not later than April 1 of each even-numbered year, the state secretary shall provide to
11 the executive office of labor and workforce development the EEO-3 data reports and EEO-5 data
12 reports of each covered employer, as applicable, covering the prior 2 calendar years.

13 (3) Not later than April 1 of each odd-numbered year, the state secretary shall provide to
14 the executive office of labor and workforce development the EEO-4 data reports of each covered
15 employer, as applicable, covering the prior 2 calendar years.

16 (c)(1) The state secretary shall accept wage data reports filed by covered employers
17 subject to the filing requirements of an EEO-1 data report as a supplement to their annual report
18 and shall be filed at the same time as the covered employer's annual report.

19 (2) The state secretary shall accept wage data reports filed by covered employers subject
20 to the filing requirements of an EEO-3 data report, EEO-4 data report or EEO-5 data report
21 through the least restrictive means available and reports by covered employers may be submitted
22 through a web portal, email submission or paper form.

23 (3) The state secretary may establish a web portal or online form to facilitate the
24 submission of the wage data reports by covered employers.

25 (d) Wage data reports in the custody of the state secretary shall not be considered "public
26 records" as defined by clause 26 of section 7 of chapter 4 and shall not be subject to chapter 66
27 or chapter 66A.

28 SECTION 2. Chapter 23 of the General Laws is hereby amended by adding the following
29 section:-

30 Section 27. (a) As used in this section, the following words shall, unless the context
31 clearly requires otherwise, have the following meanings:

32 "Aggregate wage data report", a report reflecting aggregate data from wage data reports,
33 collected from covered employers pursuant to subsection (c) of section 32 of chapter 9 and

34 provided to the executive office of labor and workforce development by the state secretary
35 pursuant to subsection (b) of said section 32 of said chapter 9. An aggregate wage data report
36 shall be separated by the following industries consistent with the North American Industry
37 Classification System (NAICS):

38 (i) agriculture, forestry, fishing and hunting;

39 (ii) mining;

40 (iii) utilities;

41 (iv) construction;

42 (v) manufacturing;

43 (vi) wholesale trade;

44 (vii) retail trade;

45 (viii) transportation and warehousing;

46 (ix) information;

47 (x) finance and insurance;

48 (xi) real estate rental and leasing;

49 (xii) professional, scientific and technical services;

50 (xiii) management of companies and enterprises;

51 (xiv) administrative support and waste management and remediation services;

- 52 (xv) education services;
- 53 (xvi) health care and social assistance;
- 54 (xvii) arts, entertainment and recreation;
- 55 (xviii) accommodation and food services;
- 56 (xix) public administration; and
- 57 (xx) other services.

58 “EEO-1 data report”, as defined in section 105E of chapter 149.

59 “EEO-3 data report”, as defined in section 105E of chapter 149.

60 “EEO-4 data report”, as defined in section 105E of chapter 149.

61 “EEO-5 data report”, as defined in section 105E of chapter 149.

62 “Wage data report”, as defined in section 105E of chapter 149.

63 (b) The executive office of labor and workforce development shall publish on the office’s
64 website aggregate wage data reports consisting of data received pursuant to subsection (c) of
65 section 105E of chapter 149 as follows:

66 (i) annually not later than June 1, an aggregate wage data report consisting of data from
67 all EEO-1 data reports;

68 (ii) every even-numbered calendar year, not later than June 1, an aggregate wage data
69 report consisting of data from all EEO-3 data reports and EEO-5 data reports; and

70 (iii) every odd-numbered calendar year, not later than June 1, an aggregate wage data
71 report consisting of data from all EEO-4 data reports.

72 SECTION 3. Section 1 of chapter 149 of the General Laws, as appearing in the 2022
73 Official Edition, is hereby amended by striking out, in lines 31 and 32, the words “one hundred
74 and five A to one hundred and five C, inclusive” and inserting in place thereof the following
75 words:- 105A to 105C, inclusive, 105E and 105F.

76 SECTION 4. Said section 1 of said chapter 149, as so appearing, is hereby further
77 amended by striking out, in lines 39 and 40, the words “one hundred and five A to one hundred
78 and five C, inclusive” and inserting in place thereof the following words:- 105A to 105C,
79 inclusive, 105E and 105F.

80 SECTION 5. Said chapter 149, as so appearing, is hereby further amended by inserting
81 after section 105D the following 2 sections:-

82 Section 105E. (a) As used in this section, the following words shall, unless the context
83 clearly requires otherwise, have the following meanings:

84 “Annual report”, an annual report required to be filed by a covered employer with the
85 state secretary pursuant to section 45 of chapter 108A, section 63 of chapter 109, sections 12 and
86 48 of chapter 156C, section 16.22 of chapter 156D or other applicable law or regulation.

87 “Covered employer”, an employer: (i) with not less than 100 full-time employees in the
88 commonwealth at any time during the prior calendar year; and (ii) subject to the federal filing
89 requirements of a wage data report.

90 “EEO-1 data report”, a completed copy of all required components of an employer’s
91 Employer Information Report, as issued by the U.S. Equal Employment Opportunity
92 Commission, including any successor report containing the same or substantially similar
93 workforce demographic and pay data categorized by race, ethnicity, sex and job category.

94 “EEO-3 data report”, a completed copy of all required components of a local union’s
95 Local Union Report, as issued by the U.S. Equal Employment Opportunity Commission,
96 including any successor report containing the same or substantially similar workforce
97 demographic and pay data categorized by race, ethnicity, sex and job category.

98 “EEO-4 data report”, a completed copy of a State and Local Governmental Information
99 Report, as issued by the U.S. Equal Employment Opportunity Commission, including any
100 successor report containing the same or substantially similar workforce demographic and pay
101 data categorized by race, ethnicity, sex and job category.

102 “EEO-5 data report”, a completed copy of an Elementary-Secondary Staff Information
103 Report, as issued by the U.S. Equal Employment Opportunity Commission, including any
104 successor report containing the same or substantially similar workforce demographic and pay
105 data categorized by race, ethnicity, sex and job category.

106 “State secretary”, the state secretary pursuant to chapter 9.

107 “Wage data report”, an EEO-1, EEO-3, EEO-4 or EEO-5 data report.

108 (b)(1) Annually, at the time of filing its annual report, a covered employer, subject to
109 federal EEO-1 data report filing requirements, shall submit to the state secretary a copy of its

110 EEO-1 data report covering the prior calendar year as a supplement to its annual report, pursuant
111 to section 32 of chapter 9.

112 (2) Each even-numbered year, a covered employer, subject to federal EEO-3 data report
113 or EEO-5 data report filing requirements, shall submit to the state secretary a copy of its EEO-3
114 data report or EEO-5 data report, as applicable, covering the prior 2 calendar years, pursuant to
115 section 32 of chapter 9.

116 (3) Each odd-numbered year, a covered employer, subject to federal EEO-4 data report
117 filing requirements, shall submit to the state secretary a copy of its EEO-4 data report covering
118 the prior 2 calendar years, pursuant to section 32 of chapter 9.

119 (c) Annually, not later than April 1, the executive office of labor and workforce
120 development shall receive from the state secretary the wage data reports of each covered
121 employer for the prior calendar year, pursuant to section 32 of chapter 9.

122 (d) Wage data reports in the custody of the secretary of labor and workforce development
123 shall not be considered “public records” as defined by clause 26 of section 7 of chapter 4 and
124 shall not be subject to chapter 66 or chapter 66A; provided, however, that the publishing of
125 aggregate wage data reports, as defined by section 27 of chapter 23, by the executive office of
126 labor and workforce development on the executive office’s website pursuant to section 27 of
127 chapter 23 shall be considered public records.

128 (e)(1) The attorney general shall have the exclusive jurisdiction to enforce this section
129 and may obtain injunctive or declaratory relief for this purpose. Any covered employer who
130 violates this section shall be punished by a warning for the first offense, not more than \$500 for

131 the second offense and not more than \$1,000 for a third offense. A fourth or subsequent offense
132 shall be subject to paragraphs (1) and (2) of subsection (b) of section 27C.

133 (2) No violation of this section shall be construed to carry treble damages pursuant to
134 section 150.

135 Section 105F. (a) As used in this section, the following words shall, unless the context
136 clearly requires otherwise, have the following meanings:

137 “Covered employer”, any employer, public or private, that employs 25 or more
138 employees in the commonwealth; provided, however, that a covered employer shall not include a
139 state or local government employer that makes employee pay range or salary information
140 publicly available.

141 “Pay range”, the annual salary range or hourly wage range that the covered employer
142 reasonably and in good faith expects to pay for such position at that time.

143 “Posting”, any advertisement or job posting intended to recruit job applicants for a
144 particular and specific employment position, including, but not limited to, recruitment done
145 directly by a covered employer or indirectly through a third party.

146 (b) A covered employer, or agent of said covered employer, shall disclose the pay range
147 for a particular and specific employment position within the posting of the position.

148 (c) A covered employer, or agent of said covered employer, shall provide the pay range
149 for a particular and specific employment position to an employee offered a promotion, or
150 transfer, to a new position with different job responsibilities.

151 (d) A covered employer, or agent of said covered employer, shall provide the pay range
152 for a particular and specific employment position to an employee holding such position, or to an
153 applicant for such position, upon request.

154 (e) It shall be unlawful for a covered employer to discharge or in any other manner
155 retaliate or discriminate against any employee or applicant because such employee or applicant
156 has taken action to enforce their rights pursuant to this section, or has made any complaint to
157 their employer, an agent of the employer or the attorney general, or instituted, or caused to be
158 instituted, any proceeding under this section, or has testified or is about to testify in any such
159 proceeding.

160 (f)(1) The attorney general shall have the exclusive jurisdiction to enforce subsections (b)
161 through (e) of this section and may obtain injunctive or declaratory relief for this purpose. Any
162 covered employer who violates this section shall be punished by a warning for the first offense,
163 not more than \$500 for the second offense and not more than \$1,000 for a third offense. A fourth
164 or subsequent offense shall be subject to paragraphs (1) and (2) of subsection (b) of section 27C.

165 (2) For enforcement pursuant to paragraph (1), an offense shall include 1 or more job
166 postings for positions made by the same employer during a 48-hour period.

167 (3) No violation of this section shall be construed to carry treble damages pursuant to
168 section 150.

169 SECTION 6. The attorney general shall conduct a public awareness campaign to provide
170 information to covered employers pursuant to sections 105E and 105F of chapter 149 of the
171 General Laws, which shall include, but not be limited to, making information available on the

172 attorney general’s website and otherwise informing covered employers of said sections 105E and
173 105F of said chapter 149.

174 SECTION 7. (a)(1) The state secretary shall provide the executive office of labor and
175 workforce development with initial EEO-1, EEO-3 and EEO-5 data reports pursuant to
176 paragraphs (1) and (2) of subsection (b) of section 32 of chapter 9 of the General Laws, as
177 inserted by section 1, not later than April 1, 2024.

178 (2) The state secretary shall provide the executive office of labor and workforce
179 development with initial EEO-4 data reports pursuant to paragraph (3) of subsection (b) of
180 section 32 of chapter 9 of the General Laws, as inserted by section 1, not later than April 1, 2025.

181 (b)(1) The executive office of labor and workforce development shall publish the first
182 aggregate wage data reports pursuant to clauses (i) and (ii) of subsection (b) of section 27 of
183 chapter 23 of the General Laws, as inserted by section 2, not later than June 1, 2024.

184 (2) The executive office of labor and workforce development shall publish the first
185 aggregate wage data report pursuant to clause (iii) of subsection (b) of section 27 of chapter 23
186 of the General Laws, as inserted by section 2, not later than June 1, 2025.

187 (c)(1) Covered employers subject to EEO-1, EEO-3 and EEO-5 data reports shall submit
188 the first reports to the state secretary pursuant to paragraphs (1) and (2), inclusive, of subsection
189 (b) of section 105E of chapter 149 of the General Laws, as inserted by section 5, beginning in
190 calendar year 2024.

191 (2) Covered employers subject to EEO-4 data reports shall submit the first report to the
192 state secretary pursuant to paragraph (3) of subsection (b) of section 105E of chapter 149 of the
193 General Laws, as inserted by section 5, beginning in calendar year 2025.

194 SECTION 8. For the first 2 years after the effective date of sections 105E and 105F of
195 chapter 149 of the General Laws, as inserted by section 5, a covered employer shall have 2
196 business days after notice of a violation to cure any defect before a fine is imposed.

197 SECTION 9. Section 105F of chapter 149 of the General Laws, as inserted by section 5
198 shall take effect 1 year after the effective date of this act.

199 SECTION 10. Section 6 shall take effect 1 year after the effective date of this act.