

State Resources

Massachusetts Commission
Against Discrimination

<http://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

Reviewing Your
MASSACHUSETTS
Job Offer

Federal Resources

Equal Employment
Opportunity Commission

<http://www.eeoc.gov>

Does your job offer require that you sign a non-compete agreement?

Only certain employees in Massachusetts can be subjected to a non-compete agreement. Under the Massachusetts Noncompetition Agreement Act, Employers may not enforce a non-compete agreement against an employee who is classified as nonexempt; an undergraduate or graduate student participating in an internship or short-term employment; employees that have been terminated without cause or laid off; or employees age 18 or younger. Employers may subject employees outside of these classifications to a non-compete, with limitations. The agreement must be reasonable in geographic scope, usually meaning that it is limited to regions where the employee provided services or had a material presence or influence within the last two years of employment. The agreement must be reasonable in the scope of prohibited activities, usually including only those services that an employee performed within the last two years of employment. The agreement cannot last longer than 12 months after the end of employment. It must also be supported by a clause providing for payment of at least 50 percent of the employee's salary during the restricted period or other mutually-agreed upon consideration. Employers cannot avoid the non-compete law's limitations by including a clause providing that another state's law governs the agreement. Nothing in the non-compete law prohibits employers from enforcing reasonable confidentiality, invention, and non-solicitation agreements.

Does your salary match the salary of your co-workers?

The Massachusetts Legislature has passed a bill requiring Massachusetts employers with 25 or more employees to disclose salary range information on job postings, and to provide pay range information to current employees, among other requirements. As of March 2024, Governor Healy has yet to sign the bill, although she is expected to do so. While Massachusetts employers are not currently required to provide you with the pay scale for the position offered to you, you can still ask for this information. You can also share your compensation details with co-workers and ask them if they are willing to share such details with you. Under federal law, most employers are prohibited from instituting policies that restrict employees from discussing pay with one another. Remember to consider not just salary, but also other compensation elements like equity, bonuses, moving expenses or vacation time when evaluating whether your compensation package is fair. Under the Pay Equity law, Massachusetts employers are prohibited from asking perspective hires about their salary history until after an offer of employment with compensation has been made. In addition, Massachusetts law protects against gender-based discrimination for "comparable work," i.e., work that requires substantially similar skill, effort and responsibility and is performed under similar working conditions.

Assuming your employment is "at will," can you negotiate for contractual protections?

Most employment in the private sector is "at-will." This means your employer can terminate your employment or change the terms of your employment whenever they want, for whatever reason they want, other than a few reasons that are illegal (i.e. unlawful discrimination and retaliation). Employees can try to negotiate for additional protection in their employment contract. For example, you can seek a provision requiring notice pay or severance pay if terminated or a provision barring termination absent "just cause."

Have you properly excluded your individual inventions prior to accepting your job offer?

Your employer may have you sign an agreement clarifying that any invention you develop while working for it becomes their property and/or that you are required to assign your rights to it. This agreement is limited to inventions that are "within the subject matter" of the employment relationship and does not apply to inventions you create before joining the employer. Usually, there is a place in the agreement to identify any such prior inventions and you should make sure you identify any such inventions and avoid using them or incorporating them in to work you do for the employer.

Does your job offer require that you sign a forced arbitration agreement?

Many employers require that employees sign arbitration agreements that waive the employee's right to pursue claims in court or to pursue claims collectively or through class actions. In many cases, such agreements are permitted. However, federal and state law prohibits employers from enforcing arbitration agreements for employees who allege they were subjected to sexual assault or sexual harassment. Those laws permit employees subject to pre-dispute mandatory arbitration agreements to pursue in court their claims related to sexual assault or sexual harassment. Some employers' agreements have opt-out provisions which allow you to opt-out of the arbitration process. It is generally a good idea to do so if given the option. Additionally, some employers have elected not to force their employees to sign such agreements and whether a prospective employer requires that you sign an arbitration agreement can be one factor you consider when evaluating multiple job opportunities.

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