

FEBRUARY 16, 2023 | DISCRIMINATION, HARASSMENT & RETALIATION

Emerging Trend in Compensation Equity: Pay Transparency Laws

The federal government and individual states have prohibited inequity in compensation based on protected categories such as sex, race, ethnicity, and many others for decades under general anti-discrimination laws. For instance, at the federal level, it is impermissible to pay someone less because of their sex under the Equal Pay Act, which requires that men and women in the same workplace be paid equally for equal work. More broadly, Title VII of the Civil Rights Act prohibits discriminating against someone in the terms and conditions of employment, including pay, based on sex, race, color, national origin, and religion. And many states have similar laws with more extensive applicability and additional protected categories. However, it is only more recently that the discussion regarding pay inequity has moved to the foreground propelled by national social movements such as the MeToo and BlackLivesMatter movements, among others. With this more recent discourse around pay equity, there have also been some accompanying changes in the law, including a number of cities and states adopting pay transparency laws that give broader, more public access to pay information.



What are Pay Transparency Laws

Pay transparency laws generally require that employers disclose specific pay information to applicants, such as the wage, salary range, or pay scale for the position. The timing of such disclosures, the context in which such disclosures are required to be made, and the content of such disclosures varies depending on the state or local law. The goal of these laws is to more effectively address existing wage gaps and prevent against future wage gaps by providing greater openness and standardization of the salary range for a specific position no matter the applicant. Indeed, per recent earnings data at the end of 2022, White women earned about 83% percent as much as their White male counterparts while Black men earned about 79.6% of the median income of White men, among several other gaps identified based on sex, race, ethnicity, and age, per data collected by the United States Bureau of Labor Statistics.

Traditionally, specific employee salaries have been a subject treated as private information, not broadly shared or discussed. However, pay transparency laws require that this information be proactively provided, often through the actual job posting or at least some time during the application process upon an offer being made or by request of the applicant. Pay transparency laws also frequently go hand in hand with limitations on the information an employer can obtain about an applicant's own pay history to avoid the potential of perpetuating a pay gap by using that information to determine current compensation.

Most Recent States that Have Adopted Pay Transparency Laws

The three most recent states to have implemented pay transparency requirements are California, Rhode Island, and Washington, whose new or updated laws all became effective January 1, 2023. They join states such as Colorado, Connecticut, Maryland, and Nevada, as well as several cities (see our [post on the New York City Pay Transparency law](#)) and localities, which all currently have laws requiring pay information be shared in some manner related to new and/or current positions. In California, employers must provide the pay scale for a position to an applicant, or for a current position to an employee, upon request. In addition, if the employer has 15 or more employees, it must include the pay scale for a position in any job posting and require third parties that announce, post, publish, or otherwise provide knowledge of a job posting include the pay scale in that job posting.

In Rhode Island, employers must provide the wage range for a position to applicants upon request by the applicant. Employers should also be sure to provide a wage range for the position before discussing compensation with the applicant. The law also creates an obligation to provide pay information to current employees at the time of hiring, when an employee moves to a new position, and when requested by the employee. Similarly, Washington state had previously required that employers disclose pay information upon request from an applicant. But, as of January 1st, employers with 15 or more employees must disclose in each job posting for a job opening the wage scale or salary range, as well as a general description of all benefits and other compensation for the position. Washington also requires employers with 15 or more employees to provide the minimum wage or salary for the position after an applicant has received an initial offer and when an employee is offered an internal transfer or promotion.

Takeaways for Employers

Although the majority of states have yet to institute specific pay transparency laws, laws of this type are likely to be adopted by more states and localities over the next few years. Indeed, in September of this year, New York state is expected to implement a requirement for employers, employment agencies, and employees or agents of either to disclose compensation or range of compensation for the job, promotion, or transfer opportunity in any job posting. Employers currently impacted by these laws, and even those who may be in the future, should carefully evaluate their current pay ranges for certain positions and how those ranges are determined. Employers may also consider a general assessment of the compensation and pay scales for current employees in similar positions as this is certainly a condition of employment that may come under closer scrutiny as the transparency around pay continues to increase.