

Pay Transparency Laws on the Rise

Pay transparency laws—which require employers to disclose compensation in an effort to improve pay equity—are on the rise across the U.S. Today, pay transparency laws are in effect in at least seven states (California, Colorado, Connecticut, Maryland, Nevada, Rhode Island, and Washington), and a number of localities (Jersey City, NJ; Ithaca, NY; New York City, NY; Westchester County, NY; Cincinnati, OH; and Toledo, OH). New York’s statewide law goes into effect in September 2023, and a handful of state legislatures have recently proposed similar legislation.

Pay transparency laws and their applicability differ by jurisdiction, and the laws take several different approaches. Generally speaking, the laws fall into three categories: (1) laws that require employers to disclose pay rates to individual candidates upon request or hire; (2) laws that require employers to file annual compensation disclosures; and (3) laws that require employers to list pay ranges in external job postings.

Colorado led the pay transparency charge with the passage of the Equal Pay for Equal Work Act (“EPEWA”). The EPEWA, which went into effect in January 2021, requires, among other mandates, that any employer with at least *one* employee in Colorado comply with certain notice requirements, including (1) disclosing compensation and benefits in “job postings” that will be—or *could be*—performed in Colorado (including job postings for remote positions); and (2) notifying existing employees of “promotional opportunities.” Over two years later, employers are still grappling with the law’s requirements.

Although once known as the most aggressive pay transparency law, the EPEWA is now accompanied by a handful of similarly strict laws in other jurisdictions—many of which present their own set of compliance issues. California’s law, for example, which went into effect on January 1, 2023, requires employers with 15 or more employees to include the pay scale for a position in any job posting. The statute, however, does not specify how to count the employees for purposes of coverage, nor does it state whether the pay scale (defined as the salary or hourly wage range that the employer reasonably expects to pay

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for the position) includes bonuses, commissions, tips, or benefits. The California Labor Commission recently issued guidance on the new law, but unfortunately, it is limited and leaves many open questions.

In addition to deciphering undefined or unclear terms, employers, particularly those operating in multiple states, must navigate a patchwork of laws that vary by jurisdiction. For instance, to be covered by Washington's law, employers must have 15 or more employees with at least one employee in Washington. New York City's law applies to employers with four or more employees that have at least one employee in New York City. And under Colorado's law, an employer is covered if they have at least one employee in Colorado.

Pay transparency laws further vary by what must be disclosed. Benefits must be disclosed in job postings under Colorado and Washington's laws, but need not be disclosed under California's law. And New York's law requires employers to disclose the position's job description, if available, but New York City's law does not.

So what's an employer to do?

- First, employers should review their compensation practices to understand their pay ranges. Employers may also want to consider conducting a comprehensive pay equity audit under the attorney-client privilege to help identify and, if necessary, remedy pay disparities.
- Second, employers should ensure that management and human resources professionals are trained on the complexities of the various laws, including the timing and content of required disclosures. Employers operating in multiple states may find it most administratively efficient to implement the most stringent pay transparency requirements.