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Washington State is Newest State to Expand Pay Transparency Requirements

by Aaron Goldstein and Marina Lyons

Effective January 1, 2023, Washington employers must include in each job posting the opening wage scale or salary range of the job and a general description of all benefits and other compensation offered. Versions of similar laws exist in Colorado, California, and New York City.

Under Washington's Equal Pay and Opportunity Act, employers must make such disclosures in job postings for Washington positions and for remote work that could be performed by a Washington employee. A "posting" means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants.

The requirements apply to every employer with 15 or more employees that has at least one Washington-based employee. This includes employers that do not have a physical presence in Washington.

According to guidance issued by the Department of Labor and Industries (L&I), an employer cannot attempt to avoid such disclosure requirements by stating that it will not accept any Washington applicants for the position. However, L&I has clarified that an employer does not need to disclose wage and salary information for jobs that are expected to be performed entirely outside Washington, even if the job posting reaches Washington-based applicants. This out-of-state exemption will be applied narrowly, on a case-by-case basis, and should be tied to a specific worksite located outside of Washington, such as wait staff at restaurants located in other states. In addition, employers do not need to disclose salary information in printed, hard copy postings made and distributed entirely outside of Washington.

The L&I guidance provides additional details regarding the information that should be included in the job posting, as summarized below.

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Wage Scale

When including a wage scale or salary range, the employer should provide the most reasonable and genuinely expected range of compensation for the job, extending from the lowest to the highest pay. If the employer does not have an existing wage scale or salary range for a position, the employer should create one prior to publishing the job posting. It is not sufficient to include an open-ended description of pay, such as “$60,000 and up.” The job posting must have a low and high number.

Moreover, if the employer intends to offer a different salary, depending on years of experience, the job posting should clearly define the lowest to highest pay established for each range of years of experience. For example, if an employer is offering one salary for an applicant with less than five years of experience and another salary for an applicant with more than five years of experience, those specific wage scales or salary ranges should both be included in the job posting.

Benefits and Other Compensation

The job posting must include a general description of *all* benefits, including, but not limited to, healthcare benefits, retirement benefits, any benefits permitting paid days off, parental leave, vacation benefits, insurance or retirement plans, such as medical insurance, vision insurance, 401k and employer-funded retirement plan, and any other benefits that must be reported for federal tax purposes, such as fringe benefits. Employers must include a detailed description of the specific amount of days or hours offered for any paid time off.

“Other compensation” that must be included in the job posting refers to bonuses, commissions, profit-sharing, stock options, or other forms of compensation that would be offered to the hired applicant in addition to their established salary range or wage scale.

On electronic job postings, employers may choose to utilize a link to lead the applicant to a more detailed description. However, the employer must assure continuous compliance with functionality of links and up-to-date information, regardless of any use of third-party administrators.

For additional information on complying with pay equity laws in Washington and other jurisdictions, see our Quirky Questions Blog.