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What's New In The Evolving Area Of Pay Equity Requirements?

October 4, 2023 – Dorsey Work Watch

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As we discussed in a prior post, pay equity is a rapidly evolving area of significant import to employers. Women, people of color, and individuals with disabilities continue to earn significantly less than non-Hispanic white men for the same work. The disparity is even more dramatic for individuals at the intersections of those underpaid groups. Anti-discrimination laws exist but, for a variety of reasons, they have not been enough to close these pay gaps. In an effort to promote pay equity, states and localities are requiring employers to take certain steps as part of their recruiting process. Since our last update, a number of new laws have passed or gone into effect that relate to issues such as pay transparency and the use of salary history.

Laws Already In Effect

- The Rhode Island and Washington pay range disclosure requirements referenced in our prior update went into effect on January 1, 2023. Rhode Island's prohibition on salary history inquiries went into effect on the same date.
- California's new pay transparency law also went into effect on January 1, 2023. Employers with fifteen or more employees are now required to disclose a pay scale in all job postings. The pay scale must set out the salary or hourly wage that the employer reasonably expects to pay a successful applicant. In addition, all employers, regardless of size, must provide (1) the pay scale for a posted position upon request by an applicant and (2) the pay scale for an employee's current position if requested by the employee.
- Effective February 12, 2023, Albany County joined the list of jurisdictions in New York requiring that employers disclose the minimum and maximum pay rate when posting open positions, including promotion and transfer opportunities.

Laws Effective In 2024

- Colorado is expanding its pay transparency law, effective January 1, 2024, to require disclosure of salary ranges to current employees for positions within their expected career progression.
- Hawaii has enacted its first pay transparency law, effective January 1, 2024, requiring employers with fifty or more employees to include a pay range that "reasonably

reflects the actual expected compensation" in job postings. The requirement does not apply to internal transfers or promotions.

- Minnesota has enacted salary history ban which becomes effective January 1, 2024. After that date, employers may not inquire about, require disclosure of, or consider pay history for purposes of determining an applicant's compensation.
- A Columbus, Ohio ordinance prohibiting employers from inquiring about and using salary history information during hiring goes into effect on March 1, 2024.

Laws Effective in 2025

- Effective January 1, 2025, Illinois law will require that postings by employers with fifteen or more employees include a pay range that the employer "reasonably expects in good faith to offer for the position, set by reference to any applicable pay scale, the previously determined range for the position, the actual range of others currently holding equivalent positions, or the budgeted amount for the position, as applicable." The requirement applies to all positions that may be performed, even in part, in Illinois and all positions which report to a supervisor located in Illinois.

Some of the requirements of these laws, particularly those that purport to dictate behavior outside the jurisdiction where they are enacted, are almost certain to face legal challenges as states begin to enforce them. Employers are advised to check for new laws in this area that may apply to them and keep an eye out for updates. Employers may also want to consider engaging in a pay equity study to help ensure compliance with applicable laws.