Navigating Pay Transparency Laws: What Employers Need to Know

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Over the last several years, in an effort to close the gender pay gap, several states and localities across the country have enacted pay transparency laws that, generally, require employers of certain sizes with employees in those locations to disclose salary and hourly wage ranges on job advertisements/postings and, in certain circumstances, to current employees seeking transfers or promotions.

How Prevalent Are Pay Transparency Laws?

As of this writing, pay transparency laws have been enacted in Colorado (the first state to do so), Maryland, Connecticut, Nevada, Rhode Island, Washington, California, and New York (effective September 17, 2023), as well as in several localities, including New York City. Notably, this legislative movement is not showing any signs of slowing down. Indeed, pay transparency laws are currently being considered in at least 15 states, including Massachusetts, Alaska, Georgia, Hawaii, Illinois, Kentucky, Missouri, Montana, New Jersey, Oregon, South Dakota, Vermont, Virginia, West Virginia, and Maryland, as well as Chicago and Washington, D.C.

In addition, two United States Representatives recently introduced a **bill** in the United States House of Representatives entitled the "Salary Transparency Act" that proposes to amend the Fair Labor Standards Act to require employers to disclose in any public or internal employment posting the wage or wage range for the employment opportunity. The Salary Transparency Act defines "wage range" as "the range of wages, or

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salaries and other forms of compensation, that the employer providing such employment opportunity anticipates in good faith relying on in setting the pay for such employment opportunity."

What Should an Employer Do to Ensure Compliance?

Given that nearly half of the country has enacted or is considering enacting pay transparency laws, it is imperative that multi-state employers be aware of their pay transparency obligations. Although pay transparency laws typically require employers to disclose salary and hourly wage ranges on job advertisements/postings, the specific requirements often vary in scope and detail. As a result, before advertising for a position, multi-state employers are well-advised to review whether there is a state-specific pay transparency law in their jurisdiction(s) and, if necessary, tailor their job advertisements/postings and practices accordingly.

What Are Some Specific Examples of Pay Transparency Laws?

In **Colorado**, employers with one or more employees in the state must include on a job posting: (1) the hourly rate of salary compensation (or range thereof) being offered for the position; (2) a general description of any bonuses, commissions or other forms of compensation; and (3) a general description of the benefits the company is offering for the position. Benefits that must be generally described include health care, retirement benefits, paid days off, and any tax-reportable benefits.

Significantly, if a business with even a single employee in Colorado advertises a job as a remote opportunity that can be performed outside of Colorado, the law still applies and employers must include the compensation and benefits in the job posting. The Colorado Department of Labor & Employment takes the position that if the job is "capable of being performed in Colorado, including remote work," then employers are required to disclose the compensation and benefits. Moreover, an employer cannot avoid its disclosure obligations under the law by explicitly stating that it will not accept Colorado applicants. As a result, employers that have even one employee in Colorado may need to comply with Colorado's pay transparency law.

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In **California**, as of January 1, 2023, an employer with fifteen or more employees, at least one of whom is physically located in California, must include the "pay scale" for the position in the job posting. California defines pay scale to mean the salary or hourly wage range (including commissions or piece rate, if applicable) the employer reasonably expects to pay for a position. In addition, like Colorado, the pay scale must be included in the job posting if the position may ever be filled in California, either in-person or remotely. Unlike Colorado, however, employers in California are not required to post "any compensation or tangible benefits provided in addition to a salary or hourly wage" (although employers *may* include this information if they so choose).

In **New York State**, starting on September 17, 2023, employers with four or more employees must disclose the compensation or a range of compensation in an advertisement for a job, promotion, or transfer opportunity, as well as the job description for the job, promotion, or transfer opportunity (if such a description exists). A range of compensation means "the minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity." If a position is to be paid solely on commission, then any advertisement shall indicate the compensation shall be based on commission.

Unlike Colorado and California, New York State's law applies to advertisements for jobs that will be physically performed, at least in part, in New York, as well as jobs that will be physically performed outside of New York, *but* only if the position will report to a supervisor, office, or other work site in New York.

Employers in New York State that have employees in New York City must also ensure compliance with New York City's **Salary Transparency Law**.

What About Massachusetts?

Here in the Commonwealth, two bills are currently pending in the Legislature – one in the Senate and the other in the House – that would require public and private employers employing fifteen or more employees in Massachusetts to "disclose the pay range for a particular employment position within the advertising or posting of the position." Covered employers would also be required to provide the pay range to a current employee who is offered a promotion or transfer to a

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new position. The **legislation** currently pending in the House defines "pay range" as the "annual salary range or hourly wage range or other compensation that the employer reasonably and in good faith expects to pay for such position at that time."

Given the strong legislative push across the country to enact pay transparency laws, it is reasonable to believe that Massachusetts – a state that generally sets the pace for new employment laws (e.g., paid sick time, paid family medical leave) – will soon adopt a pay transparency law of its own. Employers may wish to take this opportunity to review their compensation systems to ensure they can identify the pay range for each position.

We will continue to monitor any developments in the area of pay transparency and update you as they happen. Should you have any questions about pay transparency laws or require assistance tailoring job applications or postings to ensure compliance with applicable laws, please reach out to any member of the Labor & Employment Group here at Mirick O'Connell.

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