

Employee Relations LAW JOURNAL

The State of Pay Transparency

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In this article, the authors discuss pay transparency laws and obligations they impose on employers.

Pay transparency laws have taken the country by storm over the last few years, and 5 additional states (Illinois, Minnesota, Massachusetts, New Jersey, and Vermont) have debuted or will debut their own versions in 2025. These laws aim to close discriminatory-based pay gaps. This shared goal, however, is one of the only similarities in the now-15 state-specific laws promoting pay transparency. Among other differences, there are myriad differences among the laws' employee coverage thresholds, job posting requirements, and remedies, meaning employers must remain hyper-aware of any compliance obligations – some of which may be triggered by merely advertising a remote position that could feasibly be performed in states where the employer does not otherwise have a physical presence.

KEY CONSIDERATIONS RELATED TO JOB POSTING REQUIREMENTS

While pay transparency laws differ by state, there are general considerations to keep top of mind when creating job postings, regardless of the jurisdiction.

- *Consider Your Current Footprint – Where Do Your Employees Work?* As a baseline issue, the state laws have different employee thresholds at which point their laws apply; while some states

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only consider employees working within the state, others look to their total employee count nationwide. Additionally, this question often requires thinking broadly, with many laws applying to employers employing just one person working remotely in the state.

- *Where Is the Job Expected to Be, or Feasibly Could Be, Performed?* Some state laws are triggered by the possibility that a role could be performed remotely in their state, even if the employer does not (yet) have employees in that state.
- *What Postings Are Covered?* Many states require pay disclosures not only on employers' external job postings but also on internal postings, any public postings made by a third-party recruiter the employer engaged, or even on informal postings made by current employees on personal social media channels.
- *What Does "Compensation" Mean?* Each state defines "compensation" differently and therefore imposes different levels of disclosure. Some states require employers to include not only a good faith wage or salary range but also information on commission plans (if applicable), bonuses, stock options, health care benefits, retirement benefits, vacation policies, and so on.

SOME PAY TRANSPARENCY LAWS GO BEYOND JUST THE JOB POSTING

Some laws impose obligations on employers beyond identifying salary ranges in job postings. By way of example, Massachusetts now requires employers with 100 or more employees in the state to annually file copies of their most recent EEO-1 reports with the Secretary of the Commonwealth. Illinois has a similar requirement. The pay transparency laws in Colorado, Illinois, and New Jersey each contain provisions specifically aimed at career progression for current employees – they require employers to take specific measures to inform employees about opportunities as they arise and before any hiring decisions are made.

Lastly, California's pay transparency law has an additional recordkeeping component, requiring employers to maintain records of job titles and wage histories for each employee for the duration of their employment and for three years following their separation of employment and to make such records available for inspection by the state labor commissioner.

And these laws sit in addition to the many other federal, state and local law related to equal pay and salary inquiry prohibitions.

EMPLOYER NEXT STEPS

It is likely that other states will soon join with their own pay transparency laws. Thus, in consultation with counsel, employers should consider the following to ensure compliance with these increasingly overlapping pay transparency laws:

- Review your current workforce demographics and hiring trends to determine which state pay transparency laws may apply and consider actively tracking threshold numbers in each state to ensure continued compliance as your workforce changes.
- Review the relevant law for each state in which you operate (and any state in which you may permit remote work) to determine if there are any particular nuances that create additional job posting or internal communication obligations. Also confirm any requirements for affirmatively providing information to, or responding to requests from, current employees. As part of this review, consider which positions fall within the scope of the law (i.e., are remote positions included?) and how the law defines “salary,” “wages,” “pay,” and/or “benefits.”
- Develop and calculate a pay range for each current and prospective role in the business that reflects the range the employer reasonably expects to pay for each position. While reasonableness may depend on the specific facts and circumstances of the business and the role, a range should be grounded in concrete data, such as the current salary or hourly rate for a position, the current salary or hourly rate for positions just above and/or below the position being posted, market data reflecting what other employers in similar industries in the same location are advertising for the same or similar position, and internal information, like the budget for the position.
- Develop a process to consistently post the required information in job postings through both internal and external channels. Consider creating a multi-person review process for job postings to ensure that each posting has all of the required information.
- Develop a training for all employees involved in the recruitment process, including those who may post informal social media postings alerting applicants to job opportunities.

- Draft proposed language to include the requisite pay range information, including any necessary disclaimers regarding the posted pay range (i.e., the advertised pay range is not a promise of a particular wage).
- Consider and prepare to answer questions from both employees and applicants regarding pay ranges and other information relevant to the position and circumstances. For example, employers should be prepared to explain how the pay range was determined and why an individual applicant or employee qualified for salary on the lower range of the pay scale. Employers should also be prepared to discuss what an individual applicant or employee needs to do in order to earn more. Regarding existing employees, consider whether a proactive communication regarding their salary as compared to the advertised pay ranges makes sense.
- Consider conducting a pay audit with counsel to determine whether salary adjustments should be made prior to the publication of salary information.
- Ensure any recruiting or staffing companies with whom you work are aware of applicable state laws and have the proper information to share with potential applicants as it relates to pay transparency laws across the United States.

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