

Pay Transparency is Trending

Insight

10.24.2022

By Hailey Perkins and Allison Kruse

While pay discrimination laws have been around for quite some time, states and localities are increasingly taking pay discrimination a step further to affirmatively require employers to disclose compensation to applicants and employees. The trend follows similar legislation that, for example, prohibited employers from requiring disclosure of an applicant's prior salary—all with the stated aim of ensuring that any *past* compensation discrimination or inequity is not carried forward into new roles.

Compensation Posting Requirements

It is perhaps no surprise that California was the first state to take on pay transparency. As part of California's Equal Pay Act, California employers were legally required to provide the pay range for a job when applicants requested the information after their first interview.

But in 2021, Colorado took this idea one step further via the Equal Pay for Equal Work Act. Instead of just requiring an employer to provide the pay range at the post-interview stage, Colorado's law requires employers to post pay information and benefits in job postings presented to the public and for internal promotion opportunities for employees already working within an organization. The Equal Pay for Equal Work Act prohibits employers from asking applicants about their pay history and from relying on pay history to determine wages, which at least 20 other states and localities now also prohibit.

In the past two years, other states and localities have either successfully passed similar pay and benefits transparency laws or attempted to. To date, the following states and localities have laws that require compensation and benefits to be posted with job opportunities: California; Colorado; Jersey City, New Jersey; Ithaca, New York; Westchester, New York and the state of Washington.

Pay Transparency is Trending

California's amendment and Washington's posting requirements go into effect January 1, 2023.

California's amended law aims to expand its pay transparency requirements by requiring employers to provide pay scale information for the position in which an employee is currently employed. Employers with 15 or more employees will have to post pay scales on job opportunities, to include situations where the employer engages a third party to announce, post or publish the opportunity.

In Washington, employers will be required to disclose the wage scale or salary range, and a general description of all benefits to job postings. Like California, this includes postings made indirectly by third parties.

Alaska, Massachusetts, New York, Pennsylvania and South Carolina all have proposed legislation that would require job postings to include salary ranges and benefits (although Alaska's and Pennsylvania's laws seem stuck in committee).

Additionally, some states are requiring employers to provide pay information upon request from the employee, which may be an added requirement on top of already posting the same information. However, other state laws, like Rhode Island's effective January 1, 2023, require the employer to provide a wage range upon an applicant's request, but do not impose a similar requirement for job postings/opportunities. California, Connecticut, Maryland, Nevada, Ohio (Cincinnati and Toledo only) and Washington, have similar requirements for employers to provide wage information. Proposed legislation in Massachusetts and South Carolina would also require disclosure upon request.

Pay Transparency Reporting

Another approach to pay transparency is submitting reports to the state regarding equal pay. Employers will recall that the Equal Employment Opportunity Commission (EEOC) has previously required compensation reporting as part of the EEO-1 report (Component 2 data), which added gender and race pay data to the standard EEO-1 data. [Learn more about the federal government's decision to pause collecting this information.](#)

Compensation discrimination has repeatedly been [identified as a priority for the EEOC and the Office of Federal Contract Compliance Programs under the Biden Administration](#), and it is likely that some type of pay reporting mechanism will be discussed and/or reinstated. While pay reporting remains in limbo at the federal level, Illinois and California have taken action at the state level and require large employers, defined as employers with 100 or more employees, to file reports with the state that provide equal pay data.

In Illinois, the amendment to the Equal Pay Act requires all private employers with 100 or more employees in Illinois to submit demographic and wage data to the Illinois Department of Labor, along with the employer's most recently filed Annual Employer Information Report EEO-1 and an Equal Pay Compliance

Pay Transparency is Trending

Statement certifying that, among other things, the average compensation for its female and minority employees is not consistently below the average compensation for its male and non-minority employees. Employers are required to submit an initial Equal Pay Registration Certificate application between March 24, 2022 and March 23, 2024.

Previously, California only required pay data if the employer was already required to file an annual EEO-1 Employer Information Report (much like the Illinois amendment). Now, employers will be required to submit pay data reports regardless of the employer's federal EEO-1 reporting status. Employers can no longer submit an EEO-1 in lieu of pay data reports. Employers must also submit separate reports for each establishment. The first reporting deadline for this new pay data will be May 10, 2023. Proposed legislation in Vermont would require similar reporting.

Stinson is tracking the laws across the U.S. to determine whether this trend will continue in additional states or localities.

RELATED CAPABILITIES

Employment Investigations & Compliance

Government Contracts & Investigations

Labor, Employment & Benefits

STINSON

STINSON LLP \ STINSON.COM