

## Publications

### Connecticut Imposes New Pay Equity Requirements

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Beginning October 1, 2021, Connecticut employers will soon face considerable new pay equity obligations. “An Act Concerning Disclosure of Salary Range for a Vacant Position” was recently enacted and applies to all employers within Connecticut that have at least one employee. The Act requires disclosure of wage ranges and expands equal pay obligations.

### Wage Range Disclosures

The Act mandates the disclosure of wage ranges in two contexts:

- Employers must disclose the wage range to applicants for the position applied for upon the earlier of either the applicant’s request for those wage rates or prior to or at the time of making a job offer.
- Employers must disclose wage ranges to the employee for the employee’s position upon hire, upon a change in position, or when first requested by the employee.

The Act defines “wage range” as “the range of wages an employer anticipates relying on when setting wages for a position, and may include reference to any applicable pay scale, previously determined range of wages for the position, actual range of wages for those employees currently holding comparable positions or the employer’s budgeted amount for the position.” In simpler terms, the “wage range” is the minimum and maximum pay set for a position, and these minimums and maximums may take into account factors such as budgets or prior wages.

### Sex-Based Discrimination and Pay Disparity

The Act also broadens the pool of comparable employees for purposes of equal pay violations in the context of sex discrimination. Under the Act, an employer discriminates on the basis of sex by paying wages to employees at a rate less than the rate paid to employees of the opposite sex for “*comparable work on a job, when viewed as a composite of skill, effort, and responsibility.*” The law previously required

an employer to pay male and female employees for “*equal work on a job, the performance of which requires equal skill, effort, and responsibility.*” This expands potential liability for pay disparity, as the work no longer needs to be *equal* between persons of the opposite sex, merely *comparable*.

The Act also adds additional bona fide factors for justifying differentials in pay. The bona fide factors are (additions in bold): (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential system based upon a bona fide factor other than sex, **including, but not limited to**, education, training, **credential, skill, geographic location**, or experience. The bona fide factor defense only applies, however, if the employer demonstrates that such factor is not based upon or derived from a sex-based differential in compensation, and is job-related and consistent with business necessity. An employee may rebut the defense by demonstrating that an alternative employment practice exists that would serve the same business purpose without producing such a differential and the employer refused to adopt the alternative.

### Conclusion

Although the Act does not go into effect until October 1, 2021, employers should begin updating their hiring, onboarding, and change-in-position procedures now in order to be able to respond to wage disclosure requests. Employers also should consider a pay equity audit in order to account for the change in language from “equal” to “comparable.” Contact your Vorys lawyer if you have questions about the new Act or about pay equity laws in general.