

Pay Transparency: How to Navigate Compliance and Prepare Your Workplace for Pay Transparency Laws

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Why are we talking about this?

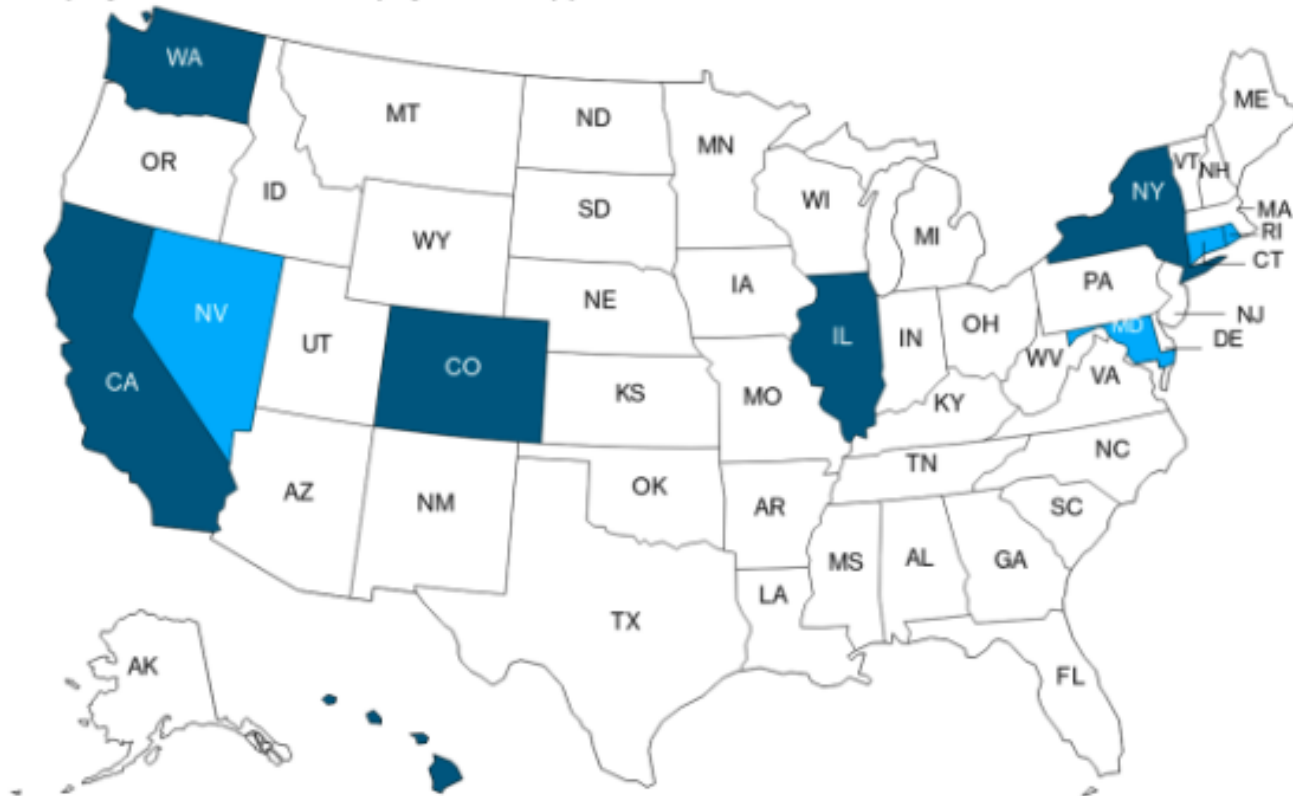
- Most pay transparency statutes are state specific based on the jurisdiction in which the individual works or the location where the applicant applied if the job can be completed remotely.
- This area of law is quickly evolving—many states have pending and enacted legislation.
- When we are transparent about pay, this can reveal issues with pay practices which could be evidence of pay discrimination/violation of equal pay acts.
- Having a policy concerning wage transparency, if implemented, is best practice, but understanding risks that may attach to the transparency is important.

The Market Generally

- Half of all U.S. job ads on Indeed in August 2023 included employer-supplied pay information.
- This is up from 18% in February 2020
- The rate of ads including pay ranges is higher in states with transparency laws (which makes sense) reaching as high as 81% in Colorado.
- To stay competitive within the market as it relates to hiring, is this something your company should be considering?
 - How does the data compare to competitors?

State Pay Transparency Laws

- salary range required in job ads
- employers must disclose pay info to applicants



Source: Bloomberg Law

Note: Job ad laws take effect Jan. 1, 2025 in Illinois, June 30, 2024 in D.C.

Bloomberg Law

Maine and Pay Transparency

- HP583/LD 936: March 2023 introduced and requiring employers with 10 or more employees to post salary ranges in job postings.
- Maine Already Has Passed Multiple Pay Transparency-esq. statutes:
 - Maine Equal Pay Law
 - Maine Salary History Ban

Maine Equal Pay Law & Salary History Ban

- 26 MRSA 628

- An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility.
- An employer may not discriminate between employees in the same establishment on the basis of race by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of another race for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility.
- Differentials that are paid pursuant to established seniority systems or merit increase systems or difference in the shift or time of the day worked that do not discriminate on the basis of sex or race are not within this prohibition the prohibitions in this section. **THOSE ARE THE ONLY EXCEPTIONS!**
- An employer may not discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this section. An employer may not prohibit an employee from disclosing the employee's own wages or from inquiring about or disclosing another employee's wages if the purpose of the disclosure or inquiry is to enforce the rights granted by this section. Nothing in this section creates an obligation to disclose wages.

- 26 MRSA 628-A

- An employer may not use or inquire about the compensation history of a prospective employee from the prospective employee or a current or former employer of the prospective employee unless an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee, after which the employer may inquire about or confirm the prospective employee's compensation history.

States Which Have Recently Passed Legislation

Passed

- Hawaii (SB 1057)
- Illinois (HB3129)
- Maine (LD 936) – Passed to be Enacted Placed on the Special Appropriations Table

Proposed

- Louisiana
- Massachusetts
- Minnesota
- Nebraska
- Oklahoma
- West Virginia

Massachusetts, New Hampshire & Vermont Equal Pay Laws

- **Massachusetts: Ch. 149, sec. 105A**
 - Employers can't require employees, as a condition of employment, to refrain from asking about, discussing, or disclosing information about their wages or other employees' wages. Employers also can't exempt themselves from this prohibition, including by entering into contracts with employees to avoid complying with the prohibition. In addition, employers can't discharge or otherwise retaliate against employees for disclosing their wages or for asking about or discussing other employees' wages.
- **New Hampshire – Sec. 275:38-a, 275:41-b**
 - Employers can't require employees to refrain from disclosing the amount of their wages as a condition of employment. Employers also can't require employees, as a condition of employment, to sign a waiver or other document that appears to deny them the right to disclose the amount of their wages, salary, or paid benefits. In addition, employers can't discharge, formally discipline, or otherwise discriminate against employees because they disclose those amounts.
- **Vermont – 21 VSA sec. 495m**
 - Employers can't require employees, as a condition of employment, to refrain from disclosing the amount of their wages or to refrain from asking about or discussing other employees' wages.

State & Local Ordinances – New York



State Wide [N.Y. Lab. Law §§ 2, 190, 194-B \(2022 N.Y. Laws 723 \(S. 9427\); 2023 N.Y. Laws 94 \(S. 1326\)\), 196-A, 218](#)

- Effective September 17, 2023, an employer is covered if it employs four or more employees.
- An employer must disclose the compensation or compensation range and job description (if it exists) when advertising a job, promotion, or transfer opportunity that will be physically performed at least partly in the state or will report to a supervisor or worksite in the state. *Effective Sept. 17, 2023*, if the opportunity pays solely on commission, the employer can disclose a general statement that compensation will be based on commission. *Effective Sept. 17, 2023*, “compensation range” means the minimum and maximum annual salary or hourly compensation range that the employer believes is accurate.

Local

- **Albany County.** an employer is covered if it meets the definition of “employer” under [N.Y. Exec. Law § 292](#). As of February 13, 2023, minimum and maximum salary or hourly wage for posted positions.
- **Ithaca.** An employer is covered if it employs four or more employees whose standard work locations are in the city. An “employee” performs services for and under the control and direction of an employer for wages or other remuneration, excluding those who are employed by their parent, spouse, or child and those who qualify as an independent contractor under applicable New York law. An employer must state a position's minimum and maximum hourly or salary compensation in an advertisement for employment as an employee, including a job, promotion, or transfer opportunity. The range can extend from the lowest to the highest hourly or salary compensation that the employer believes it would pay for the job, promotion, or transfer opportunity.



State & Local Ordinances – New York

Local (Cont.)

- **New York City** An employer is covered if it employs four or more employees or independent contractors at all times during the period beginning 12 months before a violation starts and continuing through the end of the violation. An employer must state a position's minimum and maximum salary in advertisements for job, promotion, or transfer opportunities. The range can extend from the lowest to the highest salary that the employer believes it would pay for the job, promotion, or transfer opportunity.
- **Westchester County.** An employer is covered if it employs at least four employees, unless at least two-thirds of them are family members of the employer. “Employer” includes those posting for positions that can or will be performed wholly or partly in the county. An “employee” doesn't include those who are employed by their parent, spouse, or child and those who are employed, hired, or engaged as an independent contractor. An employer must state a position's minimum and maximum salary in postings for job, promotion, or transfer opportunities. The range can extend from the lowest to the highest salary that the employer believes it would pay for the position. “Postings” are written or printed communications indicating that an employer is recruiting and accepting applications for a specific position, excluding “Help Wanted” signs or similar communications that are affixed to an employer's premises or workplace and indicate only generally that the employer is accepting applications or hiring. **Note:** These requirements are null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar requirements, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the county.



Local Ordinances

New Jersey

- **Jersey City.** An employer is covered if it is located in the city, employs five or more employees or independent contractors in the city, and advertises to provide notice of job, promotion, or transfer opportunities. An employer is covered if it is located in the city, employs five or more employees or independent contractors in the city, and advertises to provide notice of job, promotion, or transfer opportunities.

Ohio

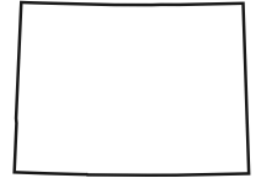
- **Cincinnati.** An employer is covered if it is located in the city and uses the services of 15 or more employees for pay in the city. Applicants for employment are covered if the employment will be performed in the city and their application will be wholly or partly solicited, received, processed, or considered in the city. "Employment" is any occupation, vocation, job, or work, excluding work as an independent contractor. An employer must provide a position's pay scale to an applicant, upon reasonable request, if the employer has provided the applicant a conditional offer of employment for the position.
- **Toledo.** An employer is covered if it is located in the city and uses the services of 15 or more employees for pay in the city. Applicants for employment are covered if the employment will be performed in the city and their application will be wholly or partly solicited, received, processed, or considered in the city. "Employment" is any occupation, vocation, job, or work, excluding work as an independent contractor. An employer must provide a position's pay scale to an applicant, upon reasonable request, if the employer has provided the applicant a conditional offer of employment for the position.





State Ordinance – California Cal. Lab. Code § 432.3 (2022 Cal. Stat. 559 (S.B. 1162))

- Employers are covered by the requirements. However, *effective Jan. 1, 2023*, the job posting requirement only applies to an employer with 15 or more employees.
- An employer must provide a position's pay scale to applicants for employment upon reasonable request. *Until Jan. 1, 2023*, a “reasonable request” is a request made after the initial interview. *Effective Jan. 1, 2023*, an employer must provide employees with their position's pay scale upon request. *Effective Jan. 1, 2023*, an employer must provide a position's pay scale in job postings and to third parties that it uses to announce, publish, or otherwise publicize job postings. “Pay scale” is a salary or hourly wage range that, *effective Jan. 1, 2023*, the employer reasonably expects to pay for a position.



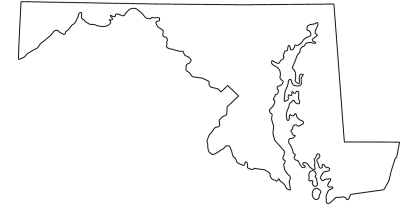
State Ordinance – Colorado (**Colo. Rev. Stat. §§ 8-5-101, 8-5-201, 8-5-203**)

- Effective January 1, 2021
- An employer is covered if it employs anyone in the state.
- An employer must disclose a position's hourly or salary compensation or compensation range in job postings, along with a general description of the position's benefits and other compensation.
- An employer must disclose a position's hourly or salary compensation or compensation range in job postings, along with a general description of the position's benefits and other compensation. The state's Division of Labor and Statistics enforces the requirements pursuant to **Colo. Rev. Stat. § 8-5-203**. A court also can order relief if an employee demonstrates a violation of the requirements while suing for a violation of **Colo. Rev. Stat. § 8-5-102**.
- June 2022, Tesla Inc. and Charles Schwab & Co. both received citations



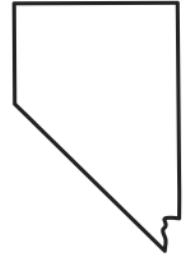
State Ordinance – Connecticut (Conn. Gen. Stat. § 31-40z)

- Effective Date October 1, 2021
- An employer is covered if it has one or more paid employees.
- An employer must provide a position's wage range to an applicant upon request or by the time the employer provides the applicant with an offer of compensation, whichever occurs first. An employer must provide employees their position's wage range upon hire, a change in their position, or their first request. “Wage range” means the range of wages an employer anticipates relying on when setting wages for a position. “Wages” means compensation for labor or services.
- An employer that violates the requirements can be sued by employees and applicants for compensatory and punitive damages, attorneys' fees, costs, and other remedies.



State Ordinance – Maryland (Md. Code Ann., Lab. & Empl. §§ 3-101, 3-301, 3-304.2, 3-306.1, 3-308)

- Effective October 1, 2020
- An employer is covered if it is engaged in a business, industry, profession, trade, or other enterprise in the state.
- An employer must provide a position's wage range to applicants for employment upon request. “Wage” means all compensation for employment.



State Ordinance – Nevada

(**Nev. Rev. Stat. §§ 613.133 to 613.134, 613.320, 613.432**)

- Employers in the state are covered by the requirements. The requirements don't apply to employment outside the state.
- An employer must provide a position's wage or salary range or rate to applicants who interview for the position. An employer must provide an employee with the wage or salary range or rate for a promotion or transfer to a new position if the employee applies for the promotion or transfer, interviews for or is offered the promotion or transfer, and requests that range or rate.



State Ordinance – Rhode Island

(**R.I. Gen. Laws §§ 28-14-1, 28-6-17 (2021 R.I. Pub. Laws 168 (S. 270A)), 28-6-19 to 28-6-23 (2021 R.I. Pub. Laws 168 (S. 270A))**)

- *Effective Jan. 1, 2023*, an employer is covered if it is an “employer” as defined in **R.I. Gen. Laws §§ 28-14-1**. “Employee” is defined in **R.I. Gen. Laws §§ 28-14-1**.
- *Effective Jan. 1, 2023*, an employer must provide a position's wage range to applicants for employment upon request. *Effective Jan. 1, 2023*, their “wage range” is the wage range that the employer anticipates relying on in setting wages for the position. “Employment” is defined in **R.I. Gen. Laws § 28-6-17 (2021 R.I. Pub. Laws 168 (S. 270A))**. *Effective Jan. 1, 2023*, an employer must provide employees with their position's wage range at the time of hire, when they move into a new position, and upon their request. *Effective Jan. 1, 2023*, “wage” means all compensation for labor or services.



State Ordinance – Washington (Wash. Rev. Code §§ 49.58.010, 49.58.060 to 49.58.070, 49.58.110 (2022 Wash. Sess. Laws 242 (S.B. 5761))

- An employer is covered if it engages in any business, industry, profession, or activity in the state and employs 15 or more employees.
- *Until Jan. 1, 2023*, if an employer offers a position to an applicant for employment, it must provide the position's minimum wage or salary to the applicant upon request. If an employer offers a transfer or promotion to an employee, it must provide the new position's wage scale or salary range to the employee upon request. *Until Jan. 1, 2023*, if that scale or range doesn't exist, the employer must provide the minimum wage or salary expectation that it set before posting the position or making the transfer or promotion. *Effective Jan. 1, 2023*, an employer must provide a position's wage scale or salary range in job postings, along with a general description of the position's benefits and other compensation. *Effective Jan. 1, 2023*, “postings” are solicitations that are intended to recruit applicants for a specific position. “Compensation” means discretionary and nondiscretionary wages and benefits.

Pay Transparency Policies

- Review Legal Requirements
- Determine Goals and Objectives of Policy
- Draft Policy
- Determine if Pay Alterations Are Necessary
- Designing and Executing Communications
- Launching Policy
- Continuous Audit
- Third-Party Practices – If you used third-parties to advertise positions what steps are you taking to ensure their compliance?



Ramifications for Failure to Comply

- New York City – The City’s Commission on Human Rights will file complaints on applicants behalf for failure to follow the law. No fines issued yet, but agency is urging employers to comply with the law.
- Colorado is the only state to publicly disclose fines against employers for failing to provide pay range in job ads. Some of the employers fined include Lockheed Martin and X Corp. (former Twitter Inc.).
- Job seekers can file lawsuits. In Washington state class actions were filed against Adidas, Albertson, and Home Depot in 2023.
- California’s labor commissioner received nearly 8,000 complaints from the public about non-compliant job ads. No citations have been issued.

Thank you!

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