

Insights

When Must Employers Publicize Salary Information?

July 27, 2023

By: Virginia A. Talley and Nancy J. Townsend

Pay transparency mandates—requiring companies to publicize employee salary information—may arrive soon in many states and municipalities. Viewed as a first step toward pay equity, the salary transparency movement is gaining traction throughout the United States. Pay transparency laws aim to give employees a clear understanding of how their pay is determined and the information needed to negotiate for fair compensation, among other benefits.

An estimated 25% of all workers in the United States now live in a jurisdiction that requires some form of salary disclosures to its employees or prospects.¹ The growing number of states and municipalities enacting salary transparency laws has experts predicting that salary transparency will soon become the rule rather than the exception.²

Different states and municipalities require varying degrees of pay information disclosure and at varying times in the hiring process. The laws may require employers to (1) disclose salary ranges to applicants of a posted position at a certain time during the hiring process; (2) disclose salary ranges of a given position upon request, when an employee changes positions, or upon hire; or (3) provide the salary range in the job posting itself.

Along with wide-ranging monetary fines, employers who violate salary transparency laws may face other penalties, such as a complaint filed with the applicable labor commissioner's office or an agency investigation. These agencies may require employers to amend job postings or provide other affirmative relief to avoid future violations. In Colorado, for example, employers who violate salary transparency laws may face fines up to \$10,000 per violation.

Examples of Existing Salary Transparency Laws

| Jurisdiction | Existing Law |
|--|---|
| Maryland and Cincinnati and Toledo, Ohio | Employers are required to disclose salary ranges upon an applicant's request. |
| Nevada | Employers must provide the salary range to an applicant after the completion of the |
| Connecticut | Employers must equip applicants with salary range information by the time an offer is made in response to an applicant's request. |
| Colorado | Employers must provide salary ranges in all job postings. This approach reflects the approach prescribed by laws of this nature. |

| | |
|--|---|
| California | Businesses who employ fifteen or more workers, with at least one worker in the state, are required to disclose salary ranges in all job postings that may be filled by a California resident, either in person or remotely. Businesses with 100 or more employees are also required to submit more detailed data to the state regarding pay, sex, race, and ethnicity than previously required. Current employees must also be provided with their role upon request. |
| Washington | Employers with fifteen or more employees must disclose the pay scale and compensation for each job posting, regardless of whether the job is posted on a company or third-party website. Employers must also comply if it employs at least one Washington-based employee, participates in commerce with Washington, or recruits Washington-based remote workers. |
| Rhode Island | Requires employers to provide pay ranges to prospective and current employees upon request. |
| East Coast municipalities (Jersey City, New Jersey; Ithaca, New York; New York City, New York; and Westchester County, New York) | Requires covered employers to disclose salary ranges in job postings. |

What's Next?

Trends show many jurisdictions enacting salary transparency laws and others expanding existing salary transparency laws to require even greater disclosures to both the workforce and government agencies. Illinois, Massachusetts, South Carolina, Tennessee, and Washington, D.C., for example, have announced imminent plans to enact salary transparency laws, which could collectively impact around 15.8 million workers.³

Employers must understand how these salary transparency laws impact their job postings, applicant interviews, hiring, promotions, and other pay data reporting. Multi-state employers and employers with a remote workforce face special challenges to navigate and comply with salary transparency laws across several jurisdictions.

As time passes and pay transparency becomes the norm, employers will inevitably learn which laws apply and how to comply. In the meantime, employers can prepare for existing and anticipated salary transparency laws:

- Check for salary transparency laws applicable to your organization and workforce (including consideration of remote employees)
- Regularly review and update pay transparency-related policies and practices and ensure compliance with applicable law
- Become familiar with your organization's applicant searching and job posting policies and practices
 - Does your organization recruit across state lines?
 - Are remote positions advertised to candidates in any state?
- Review your organization's compensation structure and job pay ranges, and be prepared to respond to requests from candidates and employees for related information
- Stay up to date on existing and emerging salary transparency laws

The evolving landscape of salary transparency laws presents challenges to employers, especially employers with employees in multiple states or remote workers. Our attorneys will continue to monitor developments in salary transparency laws, including Illinois House Bill 3129, which amends the Illinois Equal Pay Act and will take effect on January 1, 2025. For further questions about salary transparency laws and how your employment practices may be impacted, please contact **Virginia A. Talley, Nancy J. Townsend**, or another member of our **Labor and Employment Practice**.

The authors acknowledge and appreciate the contributions of Chloe Craft to this article.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] <https://www.cnbc.com/2023/01/03/where-us-companies-have-to-share-salary-ranges-with-workers-by-law.html>

[2] <https://www.cnbc.com/2022/12/29/new-salary-transparency-laws-going-into-effect-in-2023.html>

[3] See

<https://lmi.dua.eol.mass.gov/lmi/NewsRelease/state#:~:text=Employment%20now%20stands%20at%203%2C732%2C9>
; <https://www.bls.gov/eag/eag.il.htm>, https://www.bls.gov/regions/southeast/south_carolina.htm#eag;
<https://www.bls.gov/regions/southeast/tennessee.htm#eag>; <https://www.bls.gov/eag/eag.dc.htm>.