

The Growing Pay Transparency Trend and How Employers Should Prepare

Labor & Employment Law Update

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The California State Legislature recently passed a Senate Bill 1162, a pay transparency bill intended to narrow the gender pay gap and differences in pay for Black and Latino employees. If the California Governor signs Senate Bill 1162 into law, California employers with 15 or more employees must include the pay scale for a position on all job postings and provide current employees with the pay scale for their position upon request.

Moreover, employers with 100 or more employees must also submit an annual pay data report, including median and mean hourly rates for race, ethnicity and sex within each job category, to the Department of Fair Housing and Employment. Under this new law, employees and applicants would be able to access this pay information because the reports would be publicly accessible. The law includes civil pay penalties for employers in violation of these requirements.

Pay transparency laws are popping up throughout the country and the trend is expected to continue. If Senate Bill 1162 passes, California will join a handful of other states and cities that have enacted similar pay transparency laws that require employers to disclose pay ranges. New laws in Colorado (effective 2021) and Washington (set to go into effect January 2023) require employers to include wage scales and salary ranges in job postings and notices for internal promotions or transfers. New York may also soon require employers to post salary ranges on job postings if the Governor signs the bill into law. Other states have similar transparency laws with somewhat softer requirements.

While some states' transparency laws do not require employers to disclose pay information on job postings, Connecticut and Nevada require employers to disclose pay information during the hiring process and Maryland, Connecticut and California (currently) require this disclosure to applicants upon request. Other states, such as Rhode Island, have pay transparency laws soon going into effect that prohibit employers from limiting employees' discussions about pay but do not require the employer itself to disclose pay ranges.

In light of this trend, employers should take the following steps:

- Review pay levels for each position, confirm salary ranges, and ensure pay ranges are consistent across gender and race;
- Review job postings and notices of promotion or transfer and confirm that they are compliant with any existing pay transparency law in effect where you operate;
- Train managers to ensure that the organization is not taking any actions that could be deemed as limiting employees' right to discuss their pay or retaliating against employees for having these types of discussions;
- Develop a strategy to handle current employees' complaints should they find out you are paying their coworker more than best eliminates that employees' flight risk such as providing concrete reasons for the disparity (i.e., years of experience) and future opportunities to increase pay; and
- Keep your eyes and ears open for new pay transparency laws where you operate.

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