



Understanding the Basics of Pay Transparency in 2023

The tight labor market has led employees to make new demands. One of the newest expectations of employers is pay transparency. Despite many employers' reluctance to embrace pay transparency—because pay transparency can reveal unintended pay gaps and trigger questions from current employees—the practice has gained a stronger foothold in 2023. In fact, a growing number of states and localities require employers to share pay information with applicants and employees. As a result, pay transparency requirements are impacting more employers.

In this article, we'll provide a general overview of pay transparency, related laws and discuss how pay transparency rules are impacting employers.

WHAT IS PAY TRANSPARENCY?

Pay transparency is the practice of openly sharing pay-related information with current and potential employees. This information generally includes the pay scales or salary ranges for specific positions. The goal of pay transparency is to help ensure fairness and equity in the workplace by providing employees and applicants with a better understanding of how they're compensated compared to other positions and individuals. Employees value pay transparency because it can help them to avoid applying for jobs they wouldn't accept due to low pay, negotiate for better salaries and build trust with their employers.

PAY TRANSPARENCY LAWS

It's becoming clear that pay transparency is not a passing trend. At the start of 2023, a fifth of all U.S. workers were covered under pay transparency laws. Colorado was the first jurisdiction to enact pay transparency laws. Beginning in 2021, Colorado employers must provide salary ranges and a general benefits overview in job postings for work to be performed in Colorado, even if the work is performed remotely within the state.

Since then, many states and localities have enacted their own pay transparency laws, including the following:

- + California
- + Cincinnati, Ohio
- + Connecticut
- + Ithaca, New York
- + Jersey City, New Jersey
- + Maryland
- + Nevada
- + New York City, NY
- + Rhode Island
- + Toledo, Ohio
- + Washington

Pay transparency laws vary depending on the jurisdiction.

The following are examples of how pay transparency laws can differ based on the jurisdiction:

- + In **California**, covered employers must provide pay scale information (e.g., pay scales, hourly or salary compensation, etc.) in any job posting.
- + In **Colorado**, covered employers must provide pay range information in any job listing that could be performed in the state.
- + In **New York City**, covered employers must provide the minimum and maximum annual salary (or hourly wage) for all job postings, promotions and transfer opportunities.
- + In **Maryland and Cincinnati, Ohio**, employers must disclose pay ranges upon an applicant's request.
- + In **Connecticut**, covered employers must disclose wage ranges to current employees and applicants upon receipt of an applicant's request or the communication of a job offer, whichever comes first.
- + In **Rhode Island**, covered employers must provide pay range information upon an applicant's request and prior to discussing compensation. This can occur at the time of hire or when an employee moves into a new position. Covered employers must also disclose wage ranges to employees upon request.
- + In **Washington and Toledo, Ohio**, covered employers must disclose minimum wage and salary information upon an applicant's request if an offer of employment has been made.
- + In **Nevada**, employers must provide wage and salary information to applicants who have completed an interview.

In addition to requiring employers to provide pay range information, some jurisdictions, such as Colorado and Washington, require employers to disclose benefits information. As a growing number of states and localities have embraced pay transparency, it's likely that more will do so over the next few years.

The examples of pay transparency laws provided in this article are only a broad overview. Employers impacted by such laws should review all applicable laws and stay apprised of any changes. Due to the complexities of pay transparency laws, employers are encouraged to seek legal counsel to discuss any specific issues and concerns.

COMPLIANCE CHALLENGES

Pay transparency laws present distinct compliance challenges for employers subject to them since they vary depending on the state or locality. Employers who fail to comply with these laws can incur costly penalties ranging from \$300 to \$250,000, depending on the jurisdiction. Employer compliance difficulties are often greater for organizations that recruit and hire employees across state lines. This has been further complicated by the general acceptance of remote work.



Hiring remote workers can trigger legal obligations and create potential risks even in states where employers do not have a physical presence. For example, an employer advertising a remote work position that can be performed in any state may need to ensure the job posting complies with all applicable pay transparency laws throughout the country, including salary range or benefits information. It's unlikely that employers can avoid their pay transparency obligations by stating that residents of specific states are not eligible to apply, as states like Colorado do not permit this.

To avoid these potential issues, some employers restrict remote work entirely or require candidates to be located in states or localities that do not have pay transparency laws. Some employers provide broad wage information, such as minimum and maximum salaries for open positions, or adjust their compensation structures to include variable compensation elements, such as equity grants and discretionary bonuses. Additionally, organizations may include qualifying language in their postings that clarifies that the salary for a specific position varies depending on a candidate's experience and geographic location.

ATTRACTION AND RETENTION CONSIDERATIONS

Employees overwhelmingly support pay transparency. According to recent data from global employment website Monster, 98% of employees said employers should disclose pay ranges in job postings, with more

than half saying they'd refuse to apply for jobs that do not disclose pay ranges, even in states where pay transparency isn't legally required.

Since pay transparency is valued by applicants and employees, employers can benefit from providing pay-related information even when not required to do so. Employees value pay transparency because it holds employers accountable for providing similar wages for similar roles; therefore, employers can build trust with employees and applicants by disclosing wage and salary information. Employers who provide pay transparency information tend to receive more applicants and save time and money in recruitment efforts by ensuring candidates don't reject job offers due to insufficient pay.

Some employers may respond to the recent pay transparency trend by excluding remote workers or workers who reside in states with pay transparency laws. However, this is likely not a sustainable strategy for many employers, as it can limit their recruiting pool. In contrast, to address potential issues of recruiting remote workers or employees from states with pay transparency obligations, some employers are ensuring their job postings comply with the strictest pay transparency requirements. This can include revamping hiring and recruitment practices to comply with pay transparency requirements, standardizing job postings to include salary ranges and benefits information, or tailoring job postings for states and localities with pay transparency laws.



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Despite the growing number of states embracing pay transparency laws, many employers may feel excessive transparency is unrealistic or can create more significant workplace challenges. Even if employers are currently unaffected by pay transparency mandates, they must begin developing strategies to address this issue since pay transparency likely already impacts them directly or indirectly.

SUMMARY

It's vital that employers understand pay transparency laws, as it's likely that more states and localities will adopt these regulations in the near future. Complying with pay transparency laws can be overwhelming; however, by understanding pay transparency laws and regularly reviewing job postings, employers can protect themselves and help ensure compliance with applicable laws. Employers should consider conferring with local legal counsel if they have questions or concerns regarding pay transparency requirements.

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