



WEBINAR OVERVIEW

Pay Transparency Laws and Impact on the Workplace

March 8, 2023

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- The “Case” for Pay Transparency in the Workplace
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HRtelligence TIPS

WEBINAR OUTLINE

I. Intro/Setting the Stage

A. What is Pay Transparency – A Step Towards Pay Equity

- Pay transparency refers to companies being open about the compensation provided for current and prospective employees, as a step toward pay equity.
- Salary transparency laws drive employers to address pay parity – when pay information is out in the open it becomes difficult to hide this type of discrimination and it gives people an opportunity to advocate for themselves.
- The biases that lead to wage gaps are less likely to take root when employees and candidates have insight into the pay range for their roles.

Notes: Salary transparency laws drive employers to address pay parity. Equity goals seemingly have new urgency in the age of compensation disclosures. It becomes difficult to hide this type of discrimination when it becomes public and it gives people an opportunity to advocate for themselves.

B. The “Case” for Pay Transparency in the Workplace

- Job candidates are taking a firmer stand on salary disclosure, according to a new study.
- The survey from job search engine Adzuna revealed that more than half of respondents (54 percent) said they "straight-out declined a job offer" after they found out the salary.
- And one-third of job seekers "would not attend a job interview before knowing the salary the employer is willing to offer."
- According to Adzuna, 73 percent of job seekers think the workplace would be fairer if employers made salaries more transparent.
- According to a [2022 report](#) from compensation software company Beqom, 60 percent of 1,000 employed U.S. adults surveyed would switch companies to one with more pay transparency. And more than a third of U.S. workers surveyed said

their companies did not share gender pay gap data internally or externally – with 22 percent reporting they believed the divide had increased over the last year.

Source: <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/companies-embracing-pay-transparency-gain-a-market-advantage.aspx>

C. The Trend Towards Pay Transparency Continues

- As pay transparency laws have proliferated nationwide, it has become a topic that employers cannot avoid.
- Wage range disclosure requirements in 14 jurisdictions – Pending legislation in 16 jurisdictions
- California and Illinois have adopted pay reporting requirements
- In 2021, Colorado’s Equal Pay for Equal Work Act went into effect to prevent gender-based wage discrimination.

Notes: Colorado’s Equal Pay for Equal Work Act : In addition to making it illegal for businesses to pay “an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work,” the law also requires all Colorado-based businesses to include expected salary ranges and benefits in all their job postings. “The pay transparency stipulation is a critical component of the act’s strategy to prevent wage discrimination,” said Colorado State Senator Jessie Danielson, one of the bill’s primary sponsors.

D. Review of Current Pay Transparency Laws

While these laws seem similar on their face, each has its own nuance and a uniform policy may prove to be a challenge for a multistate employer.

Jurisdiction	Who Gets the Info?	What Must be Provided?	When?	Effective Date	Penalties
California	Applicants	A salary or hourly range, not including bonuses or equity.	Upon reasonable request after an applicant interviews for a position.	January 1, 2018	Does not specify a penalty, but a representative claim under PAGA is available.
Colorado	Applicants and Employees	The hourly rate or salary; a general description of bonuses or other compensation; and a general description of benefits.	As part of the job posting.	January 1, 2021	Civil penalties between \$500 and \$10,000 per violation.

Connecticut	Applicants and Employees	Wage range, defined as any applicable pay scale previously defined, actual range of wages for those employees currently holding comparable positions or the employer's budgeted amount for the position.	<i>For applicants:</i> the earlier of either the applicant's request or prior to an offer of compensation being made; <i>For employees:</i> upon hiring of the employee, a change in the employee's position with the employer, or upon the employee's first request.	October 1, 2021	Private right of action within two years of a violation; compensatory damages; attorneys' fees and costs; and possibly punitive damages.
Maryland	Applicants	Wage range, undefined by the law.	Upon request after application.	October 1, 2020	Civil penalties up to \$300 per violation and \$600 for each subsequent violation.
Nevada	Applicants and Employees	Wage or salary range, undefined by the law.	<i>For applicants:</i> after an applicant has completed an interview; <i>For employees:</i> after the employee has applied, interviewed or offered the promotion or transfer, and requested the salary range.	October 1, 2020	Civil penalties up to \$5,000 per violation; a private right of action.
New York City	Applicants and Employees	Minimum and maximum salary, defined as the range an employer in good faith believes at the time of posting it would pay for the advertised job, promotion or transfer.	As part of the job posting.	May 14, 2022	No specific penalties as of yet, however the New York City Commission on Human Rights is authorized to impose civil penalties up to \$125,000; a private right of action within three years; compensatory and punitive damages; attorney's fees and costs.

Cincinnati, Ohio	Applicants	Pay scale, undefined by the Ordinance.	Upon reasonable request after an applicant has been provided a conditional offer of employment.	March 13, 2020	A private right of action within two years; compensatory damages; reasonable attorney's fees and costs.
Toledo, Ohio	Applicants	Pay scale, undefined by the Ordinance.	Upon reasonable request after an applicant has been provided a conditional offer of employment.	June 25, 2020	A private right of action within two years; compensatory damages; reasonable attorney's fees and costs.
Rhode Island	Applicants and Employees	Wage range, defined as the range the employer anticipates relying on in setting wages for the position and may include reference to any applicable pre-determined pay scale, or the range of wages for incumbents in equivalent positions, or the budgeted amount for the position.	<i>For applicants:</i> upon request after application, but the employer <i>should</i> disclose the wage range prior to discussing compensation; <i>For employees:</i> both at the time of hire and when the employee moves into a new position. Upon request, employers must disclose a wage range to current employees in their current position.	January 1, 2023	Civil penalties ranging from \$1,000 - \$5,000, however the Department of Labor & Training will not begin issuing fines until December 31, 2024; a private right of action within three years; compensatory damages; special damages up to \$10,000; reasonable attorneys' fees and costs.

Washington	Applicants and Employees	<i>For applicants:</i> Minimum wage or salary expectation, undefined by the law; <i>For employees:</i> Wage scale or salary range, and if not available, minimum wage or salary expectation, undefined by the law.	<i>For applicants:</i> upon request after an offer has been made; <i>For employees:</i> upon request after an employee has been offered a promotion or transfer.	July 29, 2019	Civil penalties between \$500 and \$1,000; a private right action; compensatory damages no less than \$5,000; costs and reasonable attorneys' fees.
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Notes: While these laws seem similar on their face, each has its own nuance. As a result, using a uniform policy may prove to be a challenge for a multistate employer. For instance, in Rhode Island, employers must not only disclose a wage range for applicants and employees upon transfer or promotion but also must respond to an employee's request for a wage range for their current position. California, Washington, Connecticut, and Maryland all require disclosure upon request, but Nevada mandates automatic disclosure after an interview for an applicant. The New York City law appears to apply to jobs located within New York City only, which leaves an open question as to remote work; Colorado, on the other hand, has taken the position that remote positions require wage disclosure and any employer seeking to get around this requirement by specifically excluding Colorado applicants is not compliant with the law.

This wave of wage disclosure laws likely is only the beginning. With similar legislation pending in several additional cities and states, we can expect to see additional governmental mandates in furtherance of pay equity in the near future.

E. EXECUTIVE ORDER 11246

While this law only applies to federally-assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year, it is enforced by the US DOL and states federal contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for **asking about, discussing, or sharing information about their pay or the pay of their co-workers.**

II. New York State Pay Transparency Law

A. Statewide New York Pay Transparency Law Enacted

- On December 21, 2022, Governor Kathy Hochul signed New York State's compensation transparency bill into law. T
- The new law will **take effect on September 17, 2023.**

B. Covered Employers

- Employers with **at least four employees** and employment agencies (excluding temporary help firms as defined under Section 619 of the Labor Code) are considered covered employers.

C. Mandatory Disclosure Requirement

- Covered employers must include **in any advertisement** for a job, promotion, or transfer opportunity the **minimum and maximum annual salary or hourly range of compensation** that the employer in good faith believes to be accurate at the time of the posting. The law requires employers to also **disclose the applicable job description** if one exists.
- For commission-only positions, a general statement that compensation will be based on commission may satisfy the disclosure requirement.
- The bill defines **range of compensation** as the “minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity.”

D. Recordkeeping

- The state law will also require employers to **keep and maintain necessary records** to evidence compliance with the statute, including, but not limited to, the history of compensation ranges for each job, promotion, or transfer opportunity and the job descriptions for such positions, if they exist.
- This is a distinction from the New York City ordinance, which does not have a record-keeping requirement

E. Enforcement and Penalties

- The sole enforcement mechanism under the State law resides with the NYS DOL, which can impose civil penalties for violations of the pay transparency requirements.
- NYS DOL penalties are capped at one thousand dollars for an initial violation, two thousand dollars for second violations, and three thousand dollars for subsequent violations.
- Unlike the New York City law, the State law does not give employers an opportunity to cure first-time violations before the imposition of any civil penalty.
- The State law **does not provide a private right of action** for a violation.

F. Proposed Amendments

- In its original form, the New York State pay transparency law will require employers to disclose a compensation range and job description in advertisements for jobs, promotions, or transfer opportunities that “can or will be performed, at least in part, in the state of New York.”
- If the amendments are approved, the law would apply to advertisements for jobs that “will physically be performed, at least in part, in the state of New York,” including any position that “will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York.” The amendments do not provide additional details about what is meant by “report[ing] to” a supervisor, office, or work site in the state.
- The amendments would eliminate language that would have required employers to maintain necessary records to reflect compliance with the law, including, but not limited to, “the history of compensation ranges for each job, promotion, or transfer opportunity and the job descriptions for such positions, if such descriptions exist.”
- The amendments would expand upon the meaning of the term “advertise” by defining it as “to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.”

Notes: By removing “can” and adding “physically,” the proposed bill would create a different coverage standard than the New York City pay transparency law that recently took effect. The City law expressly excludes “[p]ositions that cannot or will not be performed, at least in part, in the city of New York.” Businesses advertising positions both in New York City and elsewhere in the State should be mindful of the different standards applicable to those groups for purposes of pay transparency disclosures.

III. New York City Salary Disclosure

A. New York City Salary Transparency Law

- The new law amends New York City’s Human Rights Law to require employers advertising a job to post a minimum and maximum annual salary range or hourly wage for every job, promotion, and transfer opportunity that an employer, in good faith, believes it will pay. The law became effective on November 1, 2022.

B. Covered Employers

- All employers that have four or more employees or one or more domestic workers are covered by the NYCHRL, including this new provision of the law. As with other provisions of the NYCHRL, owners and individual employers count towards the four employees. The four employees do not need to work in the same

location, and they do not need to all work in New York City. As long as one of the employees works in New York City, the workplace is covered.

- Employment Agencies are also covered by the new law, regardless of their size. As such, employment agencies must ensure that any job listings they promote or seek to fill comply with the new salary transparency requirements.
- Temporary Help Firm Exception: The new law does not apply to temporary help firms seeking applicants to join their pool of available workers. Temporary help firms are businesses that recruit, hire, and assign their own employees to perform work or services for other organizations, to support or supplement the other organization's workforce, or to provide assistance in special work situations. However, employers who work with temporary help firms must follow the new salary transparency law.

C. Mandatory Disclosure Requirement

- Any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City is covered by the new law. An "advertisement" is a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants.
- Such advertisements are covered regardless of the medium in which they are disseminated. Covered listings include postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements. The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.
- Covered employers should follow the new law when advertising for positions that can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee's home. Because the NYCHRL's protections extend to many groups of workers, postings are covered regardless of whether they are seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHRL.

D. What Information Must be Included in Covered Job Advertisements?

- Employers must state the minimum and maximum salary they in good faith believe at the time of the posting they are willing to pay for the advertised job, promotion, or transfer opportunity. "Good faith" means the salary range the employer honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).
- Employers must include both a minimum and a maximum salary; the range cannot be open ended. For example, "\$15 per hour and up" or "maximum \$50,000 per year" would not be consistent with the new requirements. If an employer has no flexibility in the salary they are offering, the minimum and maximum salary

may be identical, for example, “\$20 per hour.” Advertisements that cover multiple jobs, promotions, or transfer opportunities can include salary ranges that are specific to each opportunity.

- Salary includes the base annual or hourly wage or rate of pay, regardless of the frequency of payment. For example, it would include an hourly wage of \$15 per hour or an annual salary of \$50,000 per year.
- Salary does not include other forms of compensation or benefits offered in connection with the advertised job, promotion, or transfer opportunity, such as:
 - Health, life, or other employer-provided insurance
 - Paid or unpaid time off work, such as paid sick or vacation days, leaves of absence, or sabbaticals
 - The availability of or contributions towards retirement or savings funds, such as 401(k) plans or employer-funded pension plans
 - Severance pay
 - Overtime pay
 - Other forms of compensation, such as commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging
 - Employers may include additional information in advertisements about frequency of pay, benefits and other forms of compensation offered in connection with the job, promotion, or transfer opportunity, even though that information is not required.

E. Enforcement and Penalties

- Employers and employment agencies who are found to have violated the NYCHRL may have to pay monetary damages to affected employees, amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.
- The Commission will not assess a civil penalty for a first complaint alleging a violation of the salary transparency provision, provided that the employer shows they have fixed the violation within 30 days of receiving the Commission’s notice of the violation.
- Covered employers may have to pay civil penalties of up to \$250,000 for a uncured first violation of the new law, as well as for any subsequent violations. Information regarding the process for submitting proof of a fixed violation and appealing a civil penalty for a violation of the new salary transparency protection is available on the Commission’s website

IV. Current Examples of Pay Equity Initiatives

A. ComplyAdvantage

A London-based provider of anti-money laundering technology, began implementing a culture of pay transparency in 2020.

Since then, it has

Initiative:

Step 1 - overt about the annual pay cycle and related processes – making sure that everyone in the workforce knew that the organization took a common approach to deciding pay.

Step 2: Created a global job framework, as well as pay ranges, and invested time in building collateral to communicate its overall approach to compensation.

Step 3 - Moving toward advertising all roles with salaries outlined upfront and it ensures that its compensation policies and practices are visible to all its people.

Impact:

Uplift in engagement as result of its commitment to pay transparency. In October 2022, an employee survey revealed that 70% of its team thought their pay was fair relative to the market while 80% felt their pay was fairly decided.

B. Buffer

Initiative: Buffer posts salary information for its employees online. That means anyone – not just other employees – can find salaries on Buffer’s website.

Impact: It’s increased awareness of bias and pay inequities. When employee pay is no longer a secret, every little difference in salary needs to be accounted for. That’s challenged her as the head of finance – and the company as a whole – to think about its pay philosophy and the way bias can creep in to create those pay differences.

C. PayScale

PayScale, a salary platform company

Initiative:

They measure pay transparency on a spectrum. Telling an employee what they earn is the bare minimum. Higher transparency levels include sharing pay ranges for each role and sharing insight into how salaries are calculated.

V. Preparing for Pay Transparency: Hypothetical Pay Questions

Prepare for Common Pay Questions...

How is my pay determined?

Notes: There is a salary range for this position which is determined by factors such as skills, level of experience required, title, and location (if applicable). Your pay is based on the position you've been hired for and the education and experience you bring to the table.

Why don't I make as much money as my colleagues?

Notes: Direct comparisons regarding pay aren't always accurate, as people are hired with diverse levels of skill and education and perform at different levels. If you'd like, we can discuss ways you can increase your earning potential.

Why are recent hires making more money than me?

Notes: There are many factors that go into determining pay, including education, experience, and level of skills. Remind me again of your background. If there's something we may have overlooked, then I'm happy to discuss this with our boss and HR.

What is meant by a salary range and how does the company decide where my pay fits into this range?

Notes: A salary range is the span between the minimum and maximum base salary an organization is willing to pay for a specific job or group of jobs. Where your pay fits in the range is determined by various factors including supply and demand, your experience and education, sometimes location, company budget, and in-demand skill sets.

How does the company determine if my pay is competitive and what's done if you discover it's not?

Notes: We monitor our pay practices, in a number of ways, including participating in salary surveys to ensure we're keeping up with the market. If necessary, market adjustments are made on an individual basis. (Note: Check with your HR department to confirm this is how things are done in your company before communicating this to an employee.)

VI. HRtelligence TIPS

New York employers should begin preparing for the September 2023 effective date by ensuring that their human resources and compensation departments, as well as third-party employment agencies, are informed of the new requirements. Employers should also take steps to determine and document compensation ranges using existing data or projecting figures on a good-faith basis. Furthermore, employers should anticipate requests for salary reviews by current employees and consider how to respond to those through existing or new internal practices.

Pay transparency doesn't have to involve creating a spreadsheet with each employee's salary listed. For instance, it can look like proactive conversations between managers and employees or payroll audits to identify discrepancies.

It's up to each employer to define how transparent they should be within their organization. Ultimately, the goal of pay transparency is to give workers an

understanding of why they're paid what they are – and what they need to do to reach the next step on the ladder.

5 Steps for Better Pay Transparency and Pay Equity

- **Determine where your company currently falls on the pay transparency spectrum, and where you want to be.** Survey managers to understand what employees want to know about their salaries.
- **Develop a pay philosophy that aligns with your talent strategy and culture.** What do you value in new hires? Which behaviors do you want to incentivize?
- **Clearly define roles and responsibilities, and use market data to set salary ranges.** This helps to eliminate bias and create a less subjective pay structure.
- **Conduct a payroll audit to identify and resolve salary discrepancies and insure parity in pay.**
- **Train managers to have proactive salary conversations with employees.**