



HR INSIGHTS

A MORETON & COMPANY HUMAN RESOURCES NEWSLETTER

Understanding the Basics of Pay Transparency

As a result of changing labor markets, one of the newest expectations of employers is pay transparency. Despite many employers' reluctance to embrace pay transparency—which 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.

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 negotiate for better salaries, avoid job postings that pay less than they'd consider, and build trust with their employers.

Pay Transparency Laws

It is becoming clear that pay transparency is not a passing trend. More than 25 percent of workers are currently covered by pay transparency laws. Colorado was the first jurisdiction to enact pay transparency laws. Beginning in 2021, Colorado employers were required to 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, 14 states and localities have enacted their own pay transparency laws, including:

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

Additionally, Hawaii and Illinois have enacted pay transparency laws that will become effective in 2024 and 2025, respectively.

Pay transparency laws vary depending on the jurisdiction. For example*:

- 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 **Washington**, 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.

Some jurisdictions, such as Colorado and Washington, require employers to disclose benefits information in addition to pay range information. Pay transparency laws are spreading across the country, with no signs of tapering off.



Compliance Challenges

Pay transparency laws present distinct compliance challenges for employers 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 is 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.

* These examples of pay transparency laws 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.

Attraction and Retention Considerations

According to recent data from global employment website Monster, 98 percent of employees said employers should disclose pay ranges in job postings, with more than half saying they would refuse to apply for jobs that do not disclose pay ranges, even in states where pay transparency is not legally required.

Since pay transparency is valued by applicants and employees, employers often benefit from providing pay-related information even when not required to do so. Employers who provide pay transparency information tend to receive more applicants and save time and money in recruitment efforts by ensuring candidates do not reject job offers due to insufficient pay.

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 is vital that employers understand pay transparency laws, as more states and localities will likely 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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