

Blog Post

# Pay Transparency Requirements on the Rise

December 20, 2021

Across the country, many states have enacted Equal Pay laws which require employers to comply with a variety of requirements, typically including limits on inquiries about prior salaries and the permissible rationale for pay differentials between similar employees. Now, many states are amending those laws to require companies to disclose the expected pay range of a position to potential job applicants. Some states now require this disclosure as early as in the job posting, while others require disclosure of the possible pay range at the time an offer is made. As of December 2021, seven states have enacted laws requiring employers to disclose salary ranges to job applicants. In addition, both Massachusetts and Pennsylvania have pending legislation.

Most recently, Nevada enacted legislation that went into effect in October, requiring pay transparency for applicants. Under the new law, Nevada employers must provide salary range information, to any new applicant who has completed an interview for a position. Employers must provide this information even if the applicant does not inquire about the salary range. In addition, employers must provide information to current employees who are seeking a transfer or promotion, upon request, after the employee has interviewed, or before an offer is made. Employers can face fines of up to \$5,000 for non-compliance. Nevada's law does not stand alone.

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Similarly, Rhode Island recently enacted legislation that includes pay disclosure requirements for employers. The new law requires that employers provide applicants the pay range of the position upon the earliest of the following: (1) the applicant's request; (2) at the time of inquiring about the applicant's wage expectations; or (3) at the time of providing the applicant an offer of compensation. The new law is effective January 1, 2023, so employers have time now to prepare.

Rhode Island and Nevada's new laws follow in the footsteps of a number of other states that already have pay disclosure laws. Colorado has one of the most expansive disclosure requirements in the nation. Under Colorado law, employers must provide salary ranges in *all* job postings related to work tied to a Colorado location or remote work performable anywhere. In Connecticut, employers must disclose the salary range for a position either upon request of the applicant or before making an offer, whichever comes sooner. California and Maryland are more lenient than Rhode Island and Colorado, requiring an employer to disclose the salary range for a position only *after* an applicant has applied to the job *and* after the applicant has made a request for the information. Washington's pay transparency law requires salary range disclosure only after the applicant has been made an offer.

The trend is clearly moving towards pay transparency. Massachusetts has pending legislation that would require employers to provide current employees and job applicants with pay scale information for the positions they hold, or those which they are interviewing. And, Pennsylvania has introduced similar legislation.

Employers must be aware of these obligations and put in place procedures to prevent missteps during the interview process. Employers should also review current job postings and interview checklists for compliance. Because the laws above are new and often contain nuanced requirements, employers are

highly encouraged to consult with experienced Akerman employment counsel to navigate these new compliance obligations.

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