

Blog Post

Pay Transparency Law Updates: Hiring in 2023

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Recent legislative action across the country suggests that expanding pay transparency requirements will continue to be a major issue for employers to navigate in 2023. Three states—Illinois, Rhode Island, and Washington—recently joined the pay transparency movement by issuing regulations or enacting laws that require some form of pay disclosure to job applicants to promote pay equity and address existing pay gaps. Employers looking to add and retain talent need to pay close attention to the developing patchwork of law on pay transparency. When recruiting in multiple states, whether for in person or remote positions, employers need to be aware of the nuances in newly enacted or amended laws relating to pay transparency.

Illinois – In 2021, Illinois Governor J.B. Pritzker signed into law amendments to the Illinois Equal Pay Act (the Equal Pay Amendments). Relatedly, after substantial public comment, the Illinois Department of Labor (IDOL) issued final regulations governing the Equal Pay Amendments that went into effect on December 22, 2022, and published in January 2023. Through the final regulations, employers are able to better understand the practical application of the Amendments, including the requirement that Illinois employers with 100 or more employees must submit an equal pay registration certification application to

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the IDOL between March 24, 2022 and March 23, 2024, and then must recertify every two years from then on.

As a part of the application process, employers must pay a \$150 filing fee, provide wage records, and submit an equal pay compliance statement. For wage records (a term that is specifically addressed in the final regulations), employers are required to provide a copy of the most recently filed Employer Information Report EEO-1 (EEO-1) as well as a list of all employees during the past calendar year with each employee's gender, race, ethnicity, county in which the employee works, start date of employment, and other information the IDOL deems necessary.

As it relates to the equal pay compliance statement, an authorized agent of the employer, corporate officer, or legal counsel is required to certify that:

- the employer is in compliance with relevant state and federal laws relating to equal pay;
- the average compensation for its female and minority employees is not consistently below the average compensation for its male and non-minority employees in each of the major job categories as reported in the EEO-1;
- the employer makes decisions for retention and promotion without regard to sex and that employees of one sex are not restricted to certain jobs;
- any identified wage or benefit disparities are addressed to ensure compliance with the Illinois Equal Pay Act;
- the frequency the employer evaluates wages and benefits; and
- a description of the manner in which the employer determines the level of wages and benefits for its employees.

If any deficiencies are identified in the application or if an application is rejected, the employer will be notified by the IDOL and will have an opportunity to cure within 30 days. Additionally, the IDOL can revoke or suspend a certificate at any time if, among other things, an employer fails to make a good faith effort to comply or if violations of the Equal Pay Act occur, which could result in civil penalties. The IDOL issued [FAQs](#) and a [flowchart](#) to assist employers in interpreting and complying with these new regulations.

Rhode Island – After its long-awaited effective date, pay transparency amendments to Rhode Island’s [Pay Equity Act](#) enacted in 2021 took effect on January 1, 2023. These amendments require businesses to provide a pay range (a minimum and maximum) at the earliest of either the applicant’s request, time of inquiring about wage expectations, or making an offer of compensation.

Washington – Building on its 2019 requirements to disclose the minimum wage or salary for a job position upon request or upon an offer of employment, Washington now [requires](#) employers to disclose the wage scale or salary range for an opening in any job posting as well as a general description of all benefits and other compensation to be offered. Under Washington state law, a “posting” means any solicitation intended to recruit a job applicant for an available position either by the employer or through a third party along with online or hard copy postings. These requirements apply to any employers that (i) have 15 or more employees and at least one Washington based employee, (ii) engage in a business in the state, or (iii) recruit for jobs that could be filled remotely by a Washington-based employee.

As we [previously reported](#), California’s Senate Bill 1162, requiring employers with 15 or more employees to disclose a “pay scale” in job postings, also went into effect on January 1, 2023. Other states and locales are soon to follow Illinois, California,

Rhode Island, and Washington in the pay equity movement. At the end of 2022, the Governor of New York signed a pay transparency bill that is scheduled to go into effect in September 2023 and requires employers to list salary ranges in all job postings and promotions. In local jurisdictions throughout New York and other states, pay transparency issues have already been brewing. For instance, a New York City law went into effect on November 1, 2022, that required employers to disclose pay ranges in job advertisements.

With the prevalence of remote jobs over the last few years and the growing emphasis on pay equity, employers should be extra cautious to comply with applicable laws. This may include an ongoing review of current and future job postings on any platform (direct posting or through a third party site), updating interview check lists, and consulting with your Akerman employment counsel.

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