Blog Post

Growing State and Local Equal Pay Protections

April 1, 2021
By Brittany Buccellato

Pay equity will be a focus of the Biden Administration, as was made clear in the White House Proclamation on Equal Pay Day last week. But states are not waiting on the federal government to act; several are moving forward with pay transparency and equity laws. California is the first state to enact its own pay data reporting law, with the first reporting deadline this week, and more changes are coming.

As noted in the Proclamation, "Due in large part to the impact of the pandemic, there are 4.2 million fewer women working now than there were in February 2020 — and millions more women have had to reduce their hours, often in response to caregiving demands that we know fall disproportionately on women." These concerns may accelerate the growing trend among state and local governments to implement equal pay protections through laws regarding pay equity, pay transparency, and salary history.

The most widely adopted of these measures are pay equity laws, which prohibit discrimination in the payment of wages for similar work. Some of these laws are stronger than others. For example, in California and New York, employers must compare employees who work in the same state (for

Related People

Brittany Buccellato

Related Work

Employee Benefits and Executive Compensation
Employment Administrative Claims Defense
Labor and Employment
Wage and Hour

Related Offices

New York

HR Defense

Akerman Perspectives on the Latest Developments in Labor and Employment Law

Visit this Akerman blog

California) and geographical region (for New York), not only the same establishment.

In addition to pay equity legislation, more and more states are beginning to pass pay transparency laws. Currently, California, Colorado, Connecticut, Delaware, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Oregon, Vermont, and Virginia all have pay transparency laws. These laws generally prohibit an employer from restricting employees from discussing or disclosing wages and from discriminating against those who do so. Some of these laws have carve-outs allowing for restrictions for employees whose jobs require or allow access to other employees' compensation information. For example, Virginia's law, which was passed last year, does not protect employees who, as part of their jobs, have access to compensation information of other employees, and disclose that information to others who would not otherwise have access to it.

California and Colorado recently passed new equal pay related laws, effective at the beginning of this year. As noted above, California's new law is the first employee pay data reporting law enacted by a state. Employers with 100 or more employees already must file EEO-1 reports; indeed the EEOC announced that the collection of 2019 and 2020 EEO-1 Component Data – delayed due to the pandemic– will open on Monday, April 26, 2021. Filers should begin preparing to submit 2019 and 2020 data in anticipation of this opening. The deadline for submitting 2019 and 2020 EEO-1 Component 1 data will be Monday, July 19th, 2021. Now, in addition to submitting the EEO-1 report, the California law requires all EEO-1 filers with at least one employee working in California to also file a report of employee pay data yearly with California's Department of Fair Employment and Housing. The first of these reports was due by March 31, 2021. The report includes wage data, broken down by race, sex, ethnicity, and job category. Similar legislation has been proposed in

other states, like New York and Rhode Island, although they have failed to pass thus far.

Colorado's new Equal Pay for Equal Work Act, among other things, requires pay information to be disclosed in job postings and prohibits employers from preventing employees from discussing their pay with other employees and from inquiring about an applicant's salary history. For a detailed description of this law, go to our previous blog post, "New Obligations For Colorado Employers." Colorado joins a number of states and local governments that have enacted salary history bans laws in order to help counteract pay disparities for women and minorities. This includes Alabama, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Puerto Rico, Vermont, Washington, San Francisco, Kansas City, New York City, Albany, Suffolk, and Westchester counties in New York, Cincinnati, Toledo, Philadelphia and Columbia, South Carolina. These laws generally prohibit employees from inquiring about an applicant's prior wages or benefits during the pre-employment process, or considering that information when making hiring or compensation decisions.

Employers should review their compensation policies to ensure that they are in compliance with this patchwork of state and local laws, and take steps now to gather their 2019 and 2020 EEO-1 data. Employers may also want to take a more proactive step in addressing the gender pay gap by undertaking pay equity analyses, which are growing in popularity. For assistance with these and other pay issues, contact your Akerman Labor and Employment attorney.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal

opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.