

Connecticut Department of Labor Guidance on Wage Range Disclosure Law Still Leaves Questions Unanswered

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The Connecticut Department of Labor recently issued [non-binding guidance](#) regarding [Public Act 21-30](#), “An Act Concerning the Disclosure of Salary Range for a Vacant Position” (“Act”). The Act went into effect on October 1, 2021.

The guidance, which is in the form of questions and answers (“Q&As”), is helpful to understand the Department of Labor’s view of the Act. However, the guidance leaves certain questions unanswered. In addition, employers should keep in mind that, because the guidance is non-binding, a court could disregard the guidance and interpret the Act’s provisions differently.

Wage Range Disclosure

As previously noted in the Epstein Becker Green *Insight* “[Connecticut Will Require Employers to Disclose Wage Range to Applicants and Employees, and Broadens Equal Pay Law](#),” the Act prohibits employers from failing or refusing to provide **job applicants** with the wage range for the position for which the applicant is applying. The wage range must be provided to the applicant upon the earlier of (1) the applicant’s request, or (2) prior to or at the time the applicant is made an offer of compensation. The Act also prohibits employers from failing or refusing to provide **current employees** with their wage range upon (1) hiring, (2) a change in the employee’s position, or (3) the employee’s first request for a wage range.

Under the Act, the “wage range” is defined as the “range of wages an employer anticipates relying on when setting wages for a position, and may include reference to any applicable pay scale, previously determined range of wages for the position, actual range of wages for those employees currently holding comparable positions or the employer’s budgeted amount for the position.”

Highlights from the Q&As

Who is covered by the Act?

The Act defines a covered “[e]mployer” as any entity within Connecticut using the services of one or more employees.

The Q&As clarify that the Act applies only to employers “within the state,” and covers those applicants or employees who apply for, or work for, a Connecticut employer, even if they work “outside the physical confines of the state.”

Thus, in this age of telework, it is important to note that the Department of Labor interprets the Act to cover applicants and employees who reside **outside** of Connecticut, but who are **applying for remote work, or who work remotely** for a Connecticut employer. Thus, a covered applicant/employee might not ever set foot in Connecticut.

What compensation methods are included in the definition of “wage range”?

The Q&As define “wage range” to mirror the definition of “wages” found in the Connecticut Wage Payment statute (Conn. Gen. Stat. 31-71a), wherein wages are defined as “compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.” “Wage range” includes commissions and bonuses that are guaranteed or based on employee performance, but it does *not* include bonuses that are *discretionary*.

What details of the compensation structure must be disclosed for a position where at least some portion of the compensation is to be based on bonus or commission?

The Q&As state that employers must disclose the wage range that the employer “anticipates” relying on when setting the wages for the position. This *may* include:

- any applicable pay scale,
- any previously determined wage range for the position,
- actual range of wages for current employees holding comparable positions, *or*
- the amount budgeted by the employer for the position.

Must an employer disclose to an applicant the wage range for any positions outside those for which the applicant is applying?

No, an applicant may only seek the wage range for a position for which the applicant is applying. Employers are not required to provide wage information for any other positions.

May an employee ask another employee for the wage range for his or her position?

Yes, an employee may inquire of another employee the wages or wage range of that employee without being subjected to retaliation from the employer. The employer, however, *is not required* to

disclose the amount of wages paid to any employee.

When must an employer provide an applicant with the wage range for the position for which the applicant is applying?

An employer must provide an applicant with wage range information at the earlier of:

- the applicant's request, *or*
- prior to or at the time the applicant is made an offer of compensation.

When must an employer provide an employee with the wage range for the employee's position?

An employer must provide an employee with wage range information at the time of:

- the hiring of the employee,
- a change in the employee's position, *or*
- the employee's first request for a wage range.

What action may an applicant or employee take if he or she believes that an employer has violated the Act?

An applicant or employee may file a civil action within two years of the date on which the alleged violation occurred, seeking compensatory damages, attorneys' fees and costs, punitive damages, and other relief as may be awarded by the court.

Any person alleging a violation of the Act may also file a complaint with the Labor Commissioner, who may issue a civil penalty if a violation is found.

Some Questions Remain Unanswered

The Q&As address many questions raised by the Act, but leaves some practical questions unanswered. For example, the Q&As note that the Act applies to "applicants for employment," but it does not further define the term "applicant" or define at what point an individual becomes an applicant for purposes of the law, such as whether an individual must submit a formal application before becoming covered by the Act. However, the Q&As do state that "the term 'applicant' should be read broadly."

Similarly, the Q&As do not address whether the request for wage range information must be made in writing or whether it may be verbal, or the method by which the employer must provide wage disclosure information.

Finally, the Q&As do not address any potential joint-employer issues, such as which entity has the obligation to disclose wage range information where the application process is handled by a third

party, such as a recruiter.

What Connecticut Employers Should Do Now

Connecticut employers should do the following:

- Notify hiring personnel and human resources personnel about the Act's requirements.
- Create wage ranges for those positions that you plan to fill after October 1, 2021, and, since such information will be required to be provided to any current employee who requests it after October 1, 2021, consider preparing wage ranges in anticipation of such requests.
- Review telework positions to determine whether the Act applies to any remote employees residing outside of Connecticut.

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