

When it Comes to Compliance, Asking the “Why” is as Important as Understanding the “What”

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As the flipping from one calendar year to the next approaches, many employers understand this is the annual moment to take stock of changes in the law becoming effective on January 1st and prepare for compliance. Given the sometimes dizzying maze of compliance changes and requirements – particularly those for multi-jurisdictional employers – it is hard to fault anyone for approaching this season with a “what do we have to do?” mindset.

But approaching compliance from a perspective of “what is the requirement?” can result in missed opportunities not only to move proactively ahead of the compliance curve, but also to continue aligning your company’s actions with its values and culture in pursuit of the proverbial but ever-elusive “right thing.” In service of that bigger picture goal, sometimes the better question to ask relative to compliance does not start with “What?” – it starts with “Why?”

The recent trend of “pay transparency” legislation offers an excellent illustration of where a “why” approach can prove valuable. [California](#), [New York State](#), [New York City](#) and [Colorado](#) have all recently passed laws requiring, in some fashion or another, that employers affirmatively include the salary or other compensation information for job postings/solicitations. And so far anyway, much of the digital ink spilled on the topic has focused on the mechanisms for pay transparency compliance – in other words, on the “here’s what to do” issue.

Such mechanistic focus is important. But it leaves the unexplored question of *why* these laws have gained traction and the reasoning behind their passage. At their core, these pay transparency laws hope to narrow the persistent compensation inequities suffered by women and minorities and gaps in compensation for similar work.

Consider this hypothetical situation: Employer posts an executive level position that for all appearances looks like an incredible opportunity without compensation information included (because the job is in a location where such posting is not required by law). The employer has narrowed the pool to Candidate A, a white male, and Candidate B, a minority female. Both appear excellent candidates and the Employer will happily hire either one at a salary as high as \$225,000. Unbeknownst to Employer, Candidate A values his work in the job as at least a \$200,000 salary. Candidate B, hoping for the opportunity and career advancement that will come with it, will be thrilled to get the job at a \$150,000 salary. Assume Candidate B is offered the job, and when asked about

salary expectations, Candidate B thinks she shoots for the moon asking for \$175,000. She is then thrilled when Employer gives her the job at that salary without batting an eye.

The obvious problem with this hypothetical scenario is that the three different parties involved all value the work differently, with the outcome being that a minority female candidate takes the position at a compensation level well below the apparent value of the position. And while I would not pretend to be qualified to opine on the various cultural, historical and institutional reasons for why Candidate B might take the position at a compensation level below its value, one has to imagine that institutional and historical reasons play some role. (Certainly the drafters of pay transparency laws have come to this conclusion.) One way or another, the objective result is some form of pay inequity relative both to what Candidate A would get for the job if he had received the offer and what Employer was willing to pay to attract the best talent for the position.

Now change one fact: with the job posting, the Employer adds something along the following: “Expected annual salary for the position: \$200,000 to \$225,000.” Candidate A and Candidate B are still both likely to apply. But in this updated scenario, Candidate B now has tangible information to understand that if she believes she is a competitive candidate for the job, the value of her work in that job is worth more than what Candidate B self-valued. And if Employer offers the job to Candidate B, she presumably takes the job **and receives the compensation the position is worth** – not how Candidate B valued the opportunity given various historical and institutional barriers. As a result of the compensation information provided in the job posting, while we cannot say Employer has eliminated the historical scourge of pay inequity, at a minimum it has created circumstances that prevented a reinforcement of pay inequity markers.

Come back now to the question of “why” instead of “what.” If the focus is on “what do we have to do to comply with California, New York and Colorado law,” there is a necessary reduction in focus on “why is this important?” Shifting to that focus however may result in a next realization along the lines of “yes, we obviously want to comply with the laws where they exist, but don’t we really want to address potential pay inequity **everywhere within our organization** because doing so aligns with our values and culture?” From there, the business decision may then become implementing transparent pay communications at an enterprise level because doing so moves the business closer to the proverbial “right thing” (and makes it more ready for compliance in jurisdictions that may pass pay equity communications laws in the future).

Not every compliance requirement – new or old – yields such a clear answer to the “why” question as the pay transparency issue. I will be the first person to confirm that some employer compliance requirements seem impractical with little value. At the same time, not asking the “why” question with compliance requirements potentially leaves both practical business solutions and cultural values opportunities on the table. And in this era where company values and culture have become more important in the competition for talent, taking that critical thinking approach to compliance can give a business a valuable competitive advantage.

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