

Know Before You Post: Pay Transparency Laws and Job Postings

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The new year is here and brings a number of states with new pay transparency requirements for employers, some of which impact job postings. Proponents believe these laws will level the playing field, allowing all candidates access to the same general salary information and enabling them to negotiate more effectively.

Currently, California, Colorado, Connecticut, Maryland, Nevada, Rhode Island, and Washington all have some type of pay transparency laws. California, Rhode Island, and Washington each had new or amended laws that went into effect as of January 1, 2023, and New York has a bill ([NY Senate Bill S9427A](#)), signed on December 21, 2022, that will take effect on September 17, 2023.

California

As of January 1, 2023, [the California Equal Pay Act](#), as amended, requires employers with at least 15 employees to add a pay scale to any job posting in California. If an employer engages a third party to announce, post, or publish a job posting then the employer must provide the pay scale to the third party, who must include it in the job posting. The California [Labor Commissioner](#) has interpreted this to require that a pay scale be included in a job posting if the position may ever be filled in California, whether in-person or remotely.

New York

Effective September 17, 2023, employers with four or more employees, as well as employment agencies (excluding temporary staffing agencies), when posting for a new job, a promotion, or a transfer opportunity, must include the compensation or range that the employer in good faith believes to be accurate at the time of the posting. Employers are also required to post a job description, if one exists.

Rhode Island

As of January 1, 2023, the Rhode Island Equal Pay Law, as amended, requires employers with one or more employees in Rhode Island to provide job applicants with wage range information upon request and/or prior to discussing compensation. The law also addresses wage transparency for

current employees, prohibits inquiring about an applicant's wage history, and prohibits wage differentials.

Washington

As of January 1, 2023, Washington's [Equal Pay and Opportunities Act](#) requires employers with 15 or more employees to disclose a posted position's salary range or wage scale, as well as a general description of all other compensation (e.g., bonuses, commissions, profit-sharing, stock options) or benefits (e.g., retirement, PTO/vacation, paid holidays, more generous paid sick leave). This requirement applies to employers who meet the 15-employee threshold and who engage "in any business, industry, profession, or activity" in Washington. According to the [Washington State Department of Labor](#), an employer with no physical presence in Washington is covered if it (1) has at least 15 employees, (2) has at least one [Washington-based employee](#), and (3) engages in business in Washington or recruits for jobs that could be filled by Washington-based employees. Additionally, employers cannot avoid disclosing wage and salary information requirements by indicating within a posting that the employer will not accept Washington applicants. Job postings for jobs that will be performed entirely outside of Washington (e.g., waitstaff at restaurants in other states or other jobs tied to worksites physically outside of the state) do not need to include salary or wage information even if the posting reaches potential applicants who would fill the position as a Washington-based employee. The Washington State Department of Labor, however, warns that this out-of-state exception should be applied narrowly and on a case-by-case basis.

Next Steps

Where are you and your employees (and potential employees) located and do you trigger any of these state pay transparency laws?

If you trigger these requirements, you will need to:

- Check your job postings – be sure to update any existing job postings and ensure any new postings comply with state requirements.
- Check your job application forms to make sure they include only permissible questions on pay history.
- Train human resources and anyone performing employee interviews on the applicable laws and permissible or impermissible questions and information related to an applicant's pay history or information on the position's pay range.