

# LITERALLY LEVELING UP

PAY EQUITY, PAY TRANSPARENCY, & WAGE DISCLOSURE

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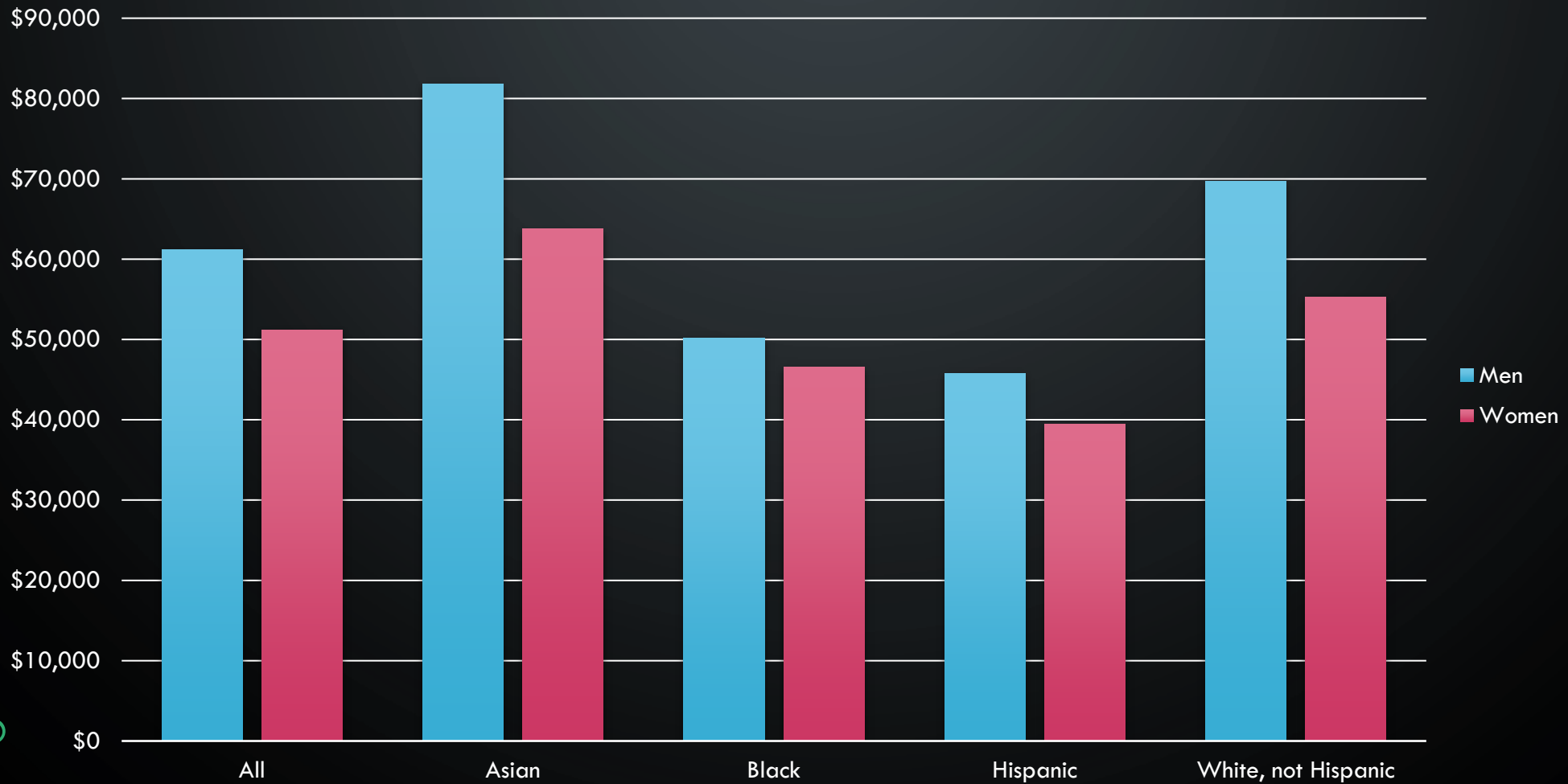




# AGENDA

- Why pay equity is an issue
  - Pay equity laws
  - Salary history and pay transparency laws
  - Basics of pay equity audits
- 
- 

# MEDIAN EARNINGS BY SEX AND RACE





# Pay Equity Laws

A patchwork quilt of federal  
and state laws

# EQUAL PAY ACT (EPA)

29 U.S.C. § 206(d) – 1963

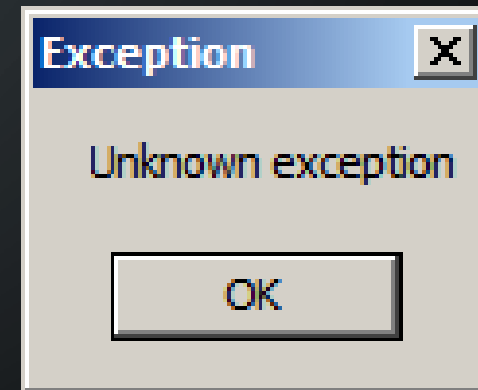
- Men and women in the same workplace be given equal pay for equal work
- Prima facie case:
  - Lower wages paid to employees of the opposite sex in the same establishment
  - Employees perform substantially equal work
  - Jobs performed under similar working conditions

Key: No intent to discriminate required

# EPA EXCEPTIONS FOR UNEQUAL PAY

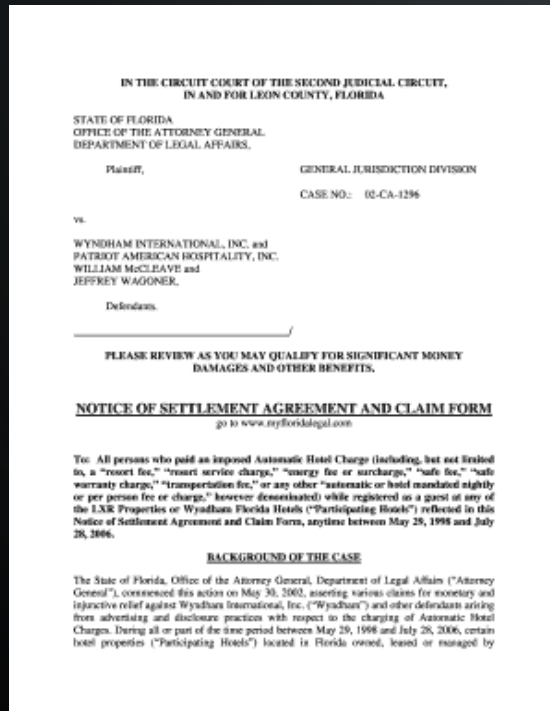
- A seniority system
- A merit system
- A system which measures earnings by quantity or quality of production
- A differential based on any other factor other than sex

**Key:** These must be shown by employer.





# EPA & PAY EQUITY LITIGATION TRENDS



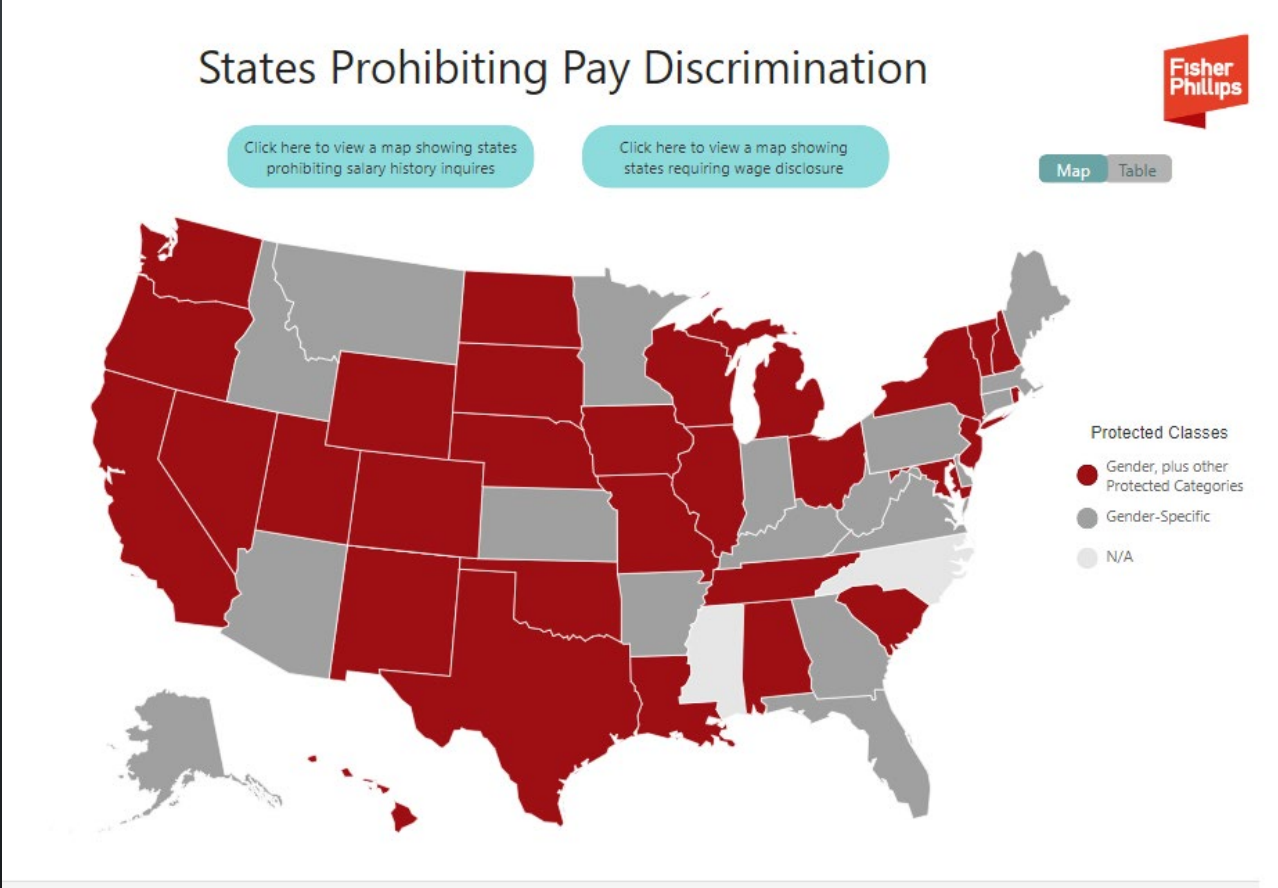
## *Smith v. Merck & Co.*, No. 13-2970 (D.N.J. April 27, 2016)

- Conditional certification granted in a lawsuit brought by 5 female sales representatives in a \$250 million gender bias suit
- 679 opt-ins
- \$6.2 million class settlement approved

# EPA DAMAGES & LIMITATIONS

- Unpaid wages
- 100% liquidated damages
- Attorney's fees and costs
- 2 years (3 years, if willful)

# FP INTERACTIVE PAY EQUITY MAP



[www.fisherphillips.com/pay-equity-map/index.html](http://www.fisherphillips.com/pay-equity-map/index.html)





# Salary History & Pay Transparency Laws

Emerging trends in  
pay equity legislation



# EVOLUTION OF PAY EQUITY LAWS

## Equal Pay Act (1963)

Men and women must be given equal pay for substantially equal work; state laws provide additional protections (e.g., race, age)



## Salary History Bans (starting in 2016)

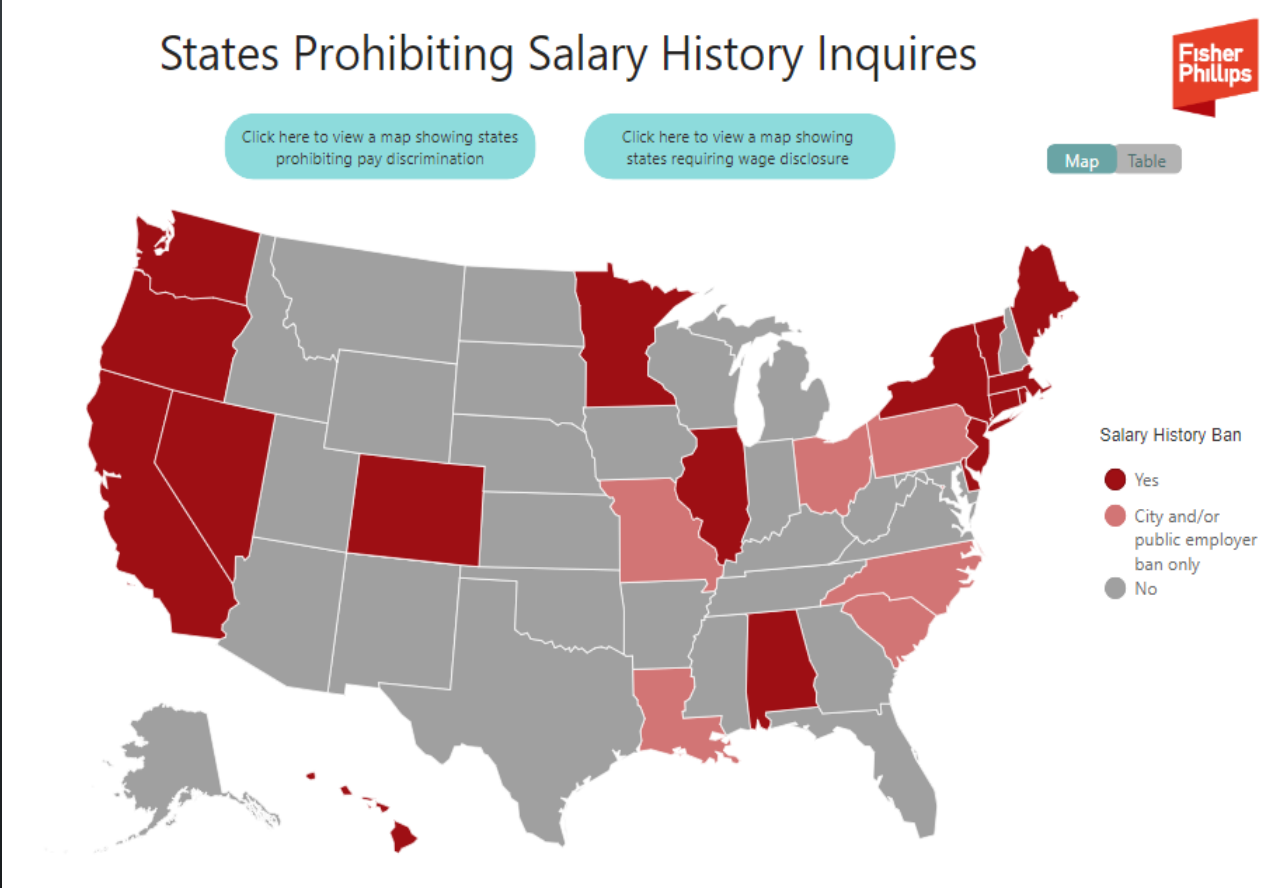
Employers cannot ask about past salary or use that information in setting compensation



## Pay Transparency Laws (starting in 2021)

Employers must disclose salary information on job postings or other reporting mechanism

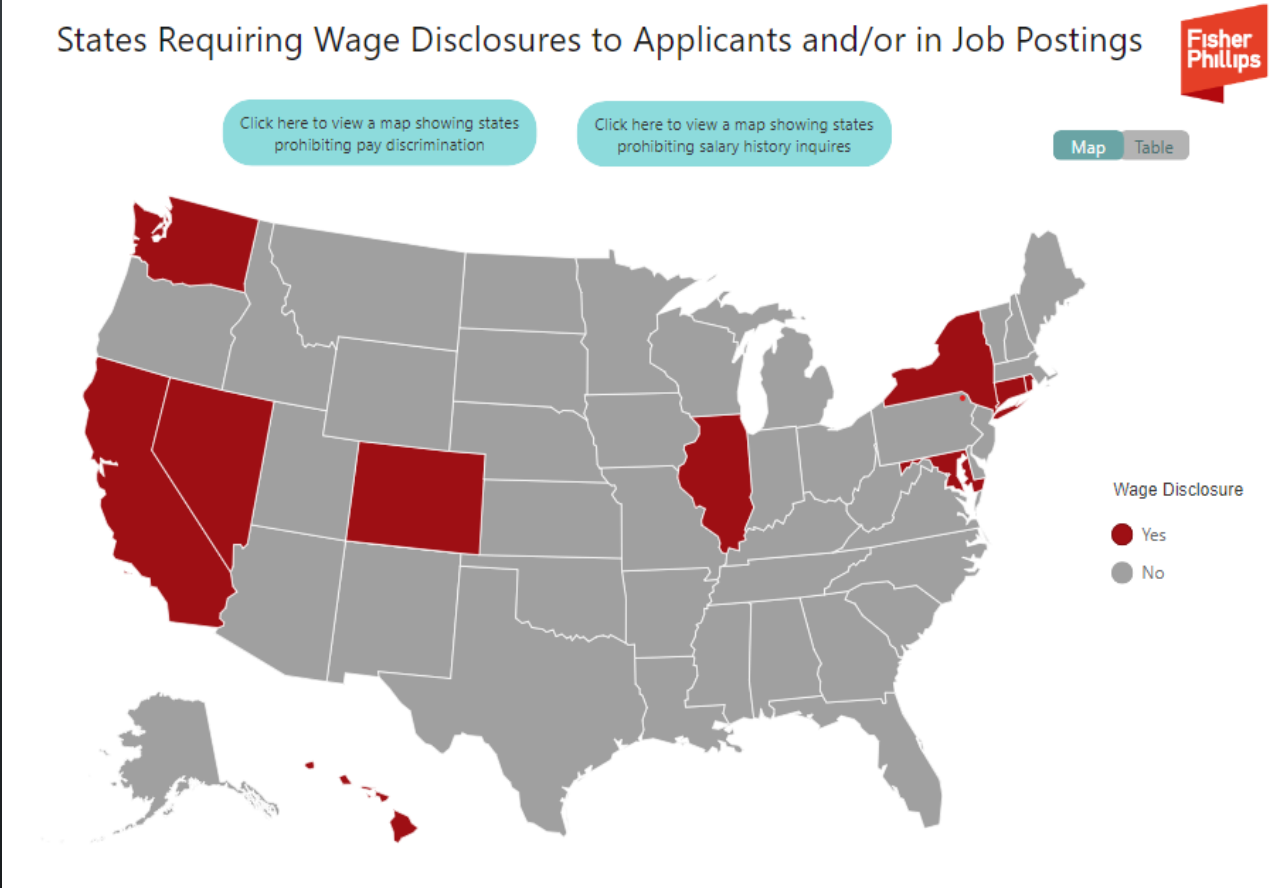
# STATES WITH SALARY HISTORY BANS



[www.fisherphillips.com/pay-equity-map/index.html](http://www.fisherphillips.com/pay-equity-map/index.html)



# STATES WITH PAY TRANSPARENCY LAWS



**Note:** Some cities and counties also require disclosure (e.g., New York, Ithaca, Westchester County, Jersey City, Toledo, Cincinnati)

[www.fisherphillips.com/pay-equity-map/index.html](http://www.fisherphillips.com/pay-equity-map/index.html)



# MULTI-STATE JOB POSTING LANGUAGE

The anticipated salary range for candidates who will work in [location] is [range]. The final pay offered to a successful candidate will be dependent on several factors that may include . . .

## Other things to describe:

- Benefits
- Bonuses or other compensation
- Hiring range v. total position range





# Pay Equity Audit Basics



# PAY EQUITY AUDITS

- Goals:
  - Identify potential pay disparities among employees performing comparable work
  - Determine whether there are **lawful explanations for those disparities**
  - Take steps to correct disparities as appropriate
- Conducting a good-faith pay audit can provide a **safe harbor** under certain state laws, as well as a defense to lawsuits alleging pay inequality
- Consider attorney-client privilege

# PAY EQUITY AUDITS

**Step 1:** Gather relevant data

**Step 2:** Identify comparable jobs

**Step 3:** Compare pay of employees in and outside various protected classes

**Step 4:** Assess whether pay differences are legally justified

**Step 5:** Address unjustified pay differentials (pay changes, promotions, etc.)

# KEY TAKEAWAYS

- Goal is to eliminate pay disparities
- Multiple state and federal laws apply
- Need to evaluate job postings, applications, and hiring process
- Consider a pay equity audit

# GAME OVER

INSERT COIN



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