

Do Tell...Pay Transparency and Equity Trends Every Employer Should Master

Today's Presenters



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Agenda

- Pay Transparency
- Pay Equity
- Immigration
- Questions

The background is a complex, abstract composition of various shades of blue. It features a grid of thin, dark lines that create a sense of depth and perspective, resembling a modern architectural structure or a digital interface. The lines intersect to form a series of overlapping planes and rectangular shapes, some of which are slightly blurred, giving the impression of movement or a dynamic environment. The overall effect is clean, professional, and visually striking.

Pay Equity

Overview

- Likely, at least in part, a response to circuit split over “factor other than sex”
- Started off gender focused but has expanded to other protected classes
- Trend informed by perception that women are less aggressive in seeking additional compensation and career advancement compared to men
- Forces companies to make opportunities available to all in a more structured, less organic way

Equal Pay Act

- Passed by John F. Kennedy in 1963
- Amended the FLSA
- Designed to prevent discrepancies in pay between people within the same jobs at the same company

Affirmative Defenses

- Discrepancy based on seniority
- Discrepancy based on merit
- System measured by quality or quantity or production
- Discrepancy based on any factor other than sex
- Circuit split on whether salary history alone is a “factor other than sex”

Lily Ledbetter Act

- Passed by President Obama in 2009
- Overturned *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*
- Resulted in the statute of limitations for an equal pay violation restarting every time there was a violation (*i.e.*, every time the employer pays the aggrieved employee)
- Current employer may be responsible for predecessor's actions

Trends in State-Specific Laws

- Increases the protected class beyond gender
- Often narrows or eliminates enumerated affirmative defenses/bona fide factors
- Prohibitions or limitations on asking about, or relying on, salary history
- Penalties and fee shifting provisions

Overview of Some Specific State Laws

- Illinois Equal Pay Act
 - May not reduce anybody's wages to comply with the Act
 - Allows for differential pay based on county
 - May not factor in salary history
 - Private sector employers' registration and certification requirements
- California Equal Pay Act
 - Public and private employers
 - Gender, race, and ethnicity
 - No requirement that employees work "in the same establishment"
 - Three-year statute of limitation
 - Prohibits pay differentials for "substantially similar work"
 - Prohibits reliance on salary history

Overview of State-Specific Laws—New York

- Prohibits differential of pay because of protected class status
- Bona fide factor other than protected class includes education, training, or experience
 - Does not apply where (1) practice causes disparate impact; (2) alternative employment practice exists; and (3) employer refuses to adopt it
- Comparable geographic region no larger than county

Overview of Some Local Laws

- New York City
 - Prohibits asking about, or relying on, salary history
 - May discuss salary expectations
 - Applies not just to wages but also to benefits
 - Can still request salary expectations
 - Does not apply to wages set by CBA
- Philadelphia Wage Equity Ordinance
 - Prohibits relying on wage history in determining compensation
 - Applies to anyone who does business in, **or**, who employs one person in Philadelphia
 - Applies only to positions in Philadelphia, but little guidance regarding what that means

The background is a complex, abstract composition of various shades of blue. It features a grid of thin, dark lines that intersect to form a pattern of squares and rectangles. The lines vary in thickness and orientation, creating a sense of depth and movement. The overall effect is a modern, architectural aesthetic. The text 'Pay Transparency' is centered in the middle of the image in a clean, white, sans-serif font.

Pay Transparency

How Did We Get Here?

- NLRA
- Federal contractors cannot have policies that discourage or prevent pay-related discussions between employees
- States and localities first started prohibiting
 - Restrictions on discussing pay; and
 - Inquiries about salary history

Four Typical Situations Where Pay Bands Must Be Disclosed

- In job postings
- During application review/interview/offer stage
- To current employees upon request
- To state EEO agencies

It's Official—Illinois Has Arrived!!

- HB 3129 Amended Illinois Equal Pay Act
- Applies to employers with at least 15 employees
- Employers must include pay scale and benefits in any job posting by January 1, 2025
 - Includes (but not limited to) bonuses, stock options, and incentives
- May satisfy by posting a link on your website

A Look at Some Specific States

- California

- Applies to employers with at least 15 workers
- Must include pay ranges in job postings
- Must provide pay scale to current and prospective employees
- Must submit detailed pay data
- First reports were due last month

- Colorado

- Applies to prospective employees and current employees up for promotion or seeking to transfer
- Must disclose in each job posting the actual compensation or a range including bonuses, commissions, and other forms of compensation
- May not exclude Colorado from national job postings

A Look at Some Specific States (cont.)

- Nevada

- Applies to applicants upon completion of interview and current employees upon request
- Must disclose wage or salary rate or range
- Expressly applies to employer and employment agencies

- New York

- Requires employers to disclose compensation in job advertisements
- Applies to work performed in NY, as well as employees who report to a supervisor, office or other work site in NY
- Applies to remote workers

EPT Effect on Immigration Green Card Sponsorship Programs

- Direct effect on PERM process
 - Administered by DOL
 - Test U.S. labor market to determine no minimally qualified U.S. workers
 - Professional positions require six steps of live recruitment
 - No requirement to post wage ranges or disclose benefits
 - Salary/wage range required only on internal company postings

PERM – Prevailing Wage Determinations (PWD)

- PWD required for every PERM
- PWDs may be higher than company's lower end of wage range
- PERM – must recruit at PWD or actual wage, whichever is higher
- PERM recruitment cannot be at odds with regular recruitment practices

Immigration Sponsorship Considerations

- Timing
 - National recruitment – is it worthwhile?
 - Start green card process earlier so employee does not max out of work visa authorization
 - Most green card processes take 2-3 years
 - Unless Indian or Chinese nationals
- Costs - higher advertising costs

EPT Factors to Consider for PERM Process

- Identify state and local laws that apply
- Determine where specific position is being advertised
- Analyze remote and hybrid work arrangements
- Determine how DOL's PWD for position will impact other recruitment

Consequences of Noncompliance

- Government agencies can initiate audits and impose fines and penalties
- Some statutes and ordinances provide for a private right of action
- Increases risk of discrimination and retaliation claims

Key Takeaways

- Expect more states and localities to pass similar laws
- Develop your response protocol and train key constituents
- Evaluate compensation regularly
- Review recruitment and job posting procedures
- Review your document retention policies
- Consider doing a pay equity audit

The background is an abstract composition of various shades of blue, ranging from deep navy to light sky blue. It features a complex network of thin, dark lines that intersect to form a grid-like pattern of rectangles and squares. The lines are not perfectly straight, giving the impression of a perspective or a dynamic, slightly blurred architectural structure. The overall effect is one of depth and complexity.

Questions?

We Welcome Your Feedback!



Please scan the QR code to access today's program evaluation.

Thank You!



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