



ALERTS

New Washington State Guidance A Reminder That More State Pay Transparency Laws Are On The Horizon

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Highlights

In anticipation of its Jan. 1, 2023, effective date, the Washington State Department of Labor and Industries recently issued interpretive guidance concerning the amended Washington Equal Pay and Opportunities Act

The act mandates disclosure of compensation ranges in job postings – including remote positions

Washington's Equal Pay Act is similar to Colorado's and New York City's laws and California's forthcoming law but does not require additional employer record keeping or reporting

Pay disclosure laws are expanding across the country, with New York state likely to enact a law soon and other legislatures poised to tackle the issue in the new year

On November 30, 2022, the state of Washington issued [long-awaited guidance document](#) providing further guidance on its amended Equal Pay and Opportunities Act, which is set to go in effect Jan. 1, 2023.

Taking a page out of other jurisdictions' approaches, Washington's move

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provides a reminder for employers to not only ensure they are ready for this new law but also to make sure they are up to date with other recently enacted state pay transparency laws. Other states and municipalities are waiting in the wings to enact similar laws.

Pay Transparency Acts Across the Country

Seen as a powerful tool to advance pay equity, pay transparency requirements have become a hot legislative item. While a popular measure, the specific requirements of each state and city's own pay transparency law vary in their actual mandates.

Pay transparency laws usually take one of two forms: 1) laws requiring disclosure of salary and/or benefits available to a position upon the request of a candidate, or 2) laws requiring disclosure of compensation wages in posted job openings.

"Disclosure upon request" laws have long been on the books in states like [California](#) and [Washington](#). Similar laws have recently been adopted in [Connecticut](#); [Maryland](#); [Nevada](#); [Rhode Island](#); and in cities in Ohio such as [Cincinnati](#) and [Toledo](#).

The second type of law, "disclosure in posting," has been grabbing headlines as well. Laws requiring the disclosure of compensation ranges in job postings are now in effect in: [Colorado](#); [Jersey City](#), New Jersey; [New York City](#), [Ithaca](#) and [Westchester County](#), New York; and, as of Jan. 1, 2023, [California](#) and [Washington](#). Unlike the disclosure upon request laws, which have been met with little acclaim or attention, these statutory schemes have become synonymous with the pay transparency movement.

Some states have implemented a third type of [pay disclosure law](#) only requiring reporting of compensation information to state fair employment practices agencies, such as in Illinois via the Illinois Equal Pay Act.

Washington Equal Pay and Opportunities Act Details

In amending its Equal Pay and Opportunities Act, Washington has expanded its current disclosure upon request law to require disclosure in posting effective Jan. 1, 2023.

Per the act's issued guidance, employers with 15 or more employees (including non-Washington-based employees) must now disclose good faith compensation ranges and a general description of available benefits in job postings for any position to be performed in Washington or that might be performed in Washington (i.e., remote work). Both an upper and lower range of the compensation scale must be provided, and all benefits that are "reasonable and genuinely expected" to be provided, such as insurance and retirement benefits, must be included.

Washington's statutory and regulatory schemes closely parallel Colorado's and New York City's current pay transparency laws, so it is not surprising that Washington applies its law to remote work as those two states do. However, unlike Colorado or California, Washington's law will not require employers to maintain employment compensation records or provide annual reports to the state's fair employment practices agency.

Under Washington's statutory scheme, employers are subject to an

administrative penalty of \$1,000 for each violation. Aggrieved candidates and current employees may also bring a civil action against an employer to recover a minimum of \$5,000 in damages (plus interest, costs and attorneys' fees).

What's on the Pay Transparency Horizon?

Enactment dates are also rapidly approaching for other state laws such as California's. With the same Jan. 1 enactment date, employers should also keep California's pay transparency act requirements top of mind. In the absence of any administrative guidance, the California law will likely also be interpreted to cover remote workers, as well.

Back on the East Coast, [legislation](#) similar to the requirements adopted by New York City has been passed by the New York State General Assembly and would implement consistent requirements across the entire state. This legislation currently sits on Gov. Kathy Hochul's desk awaiting her signature, which seems imminent.

While New York state might be the next jurisdiction to enact a pay transparency requirement after Washington and California, it certainly will not be the last. The [Salary Transparency Act](#) was introduced in the U.S. House of Representatives earlier this year, and bills previously filed in places like [Kentucky](#) are likely to be reintroduced. These initiatives have surged in popularity and will likely become a hallmark agenda item in statehouses across the nation as state general assemblies reconvene.

Employers should be mindful of this changing landscape. Hiring needs, job postings and anticipated compensation should be thoughtfully and carefully reviewed. Where applicable, employers should ensure they are in compliance with any additional regulations (i.e., recordkeeping or reporting requirements) imposed by such legislation. Additionally, employers should diligently monitor the development of pay transparency legislation as it continues to expand into new jurisdictions and should anticipate these jurisdictions to interpret their statutes broadly to apply to remote positions for work that might be performed in the state.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Aaron Vance at (317) 261-7956 or aaron.vance@btlaw.com.

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