

PAY TRANSPARENCY IS HERE – ARE YOU READY?

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Agenda

- Introduction to Pay Transparency
- The Laws Making Headlines
- Key Decision Points
- Best Practices



INTRODUCTION TO PAY TRANSPARENCY



Big Picture – Affirmative Obligations

What pay information must be disclosed?

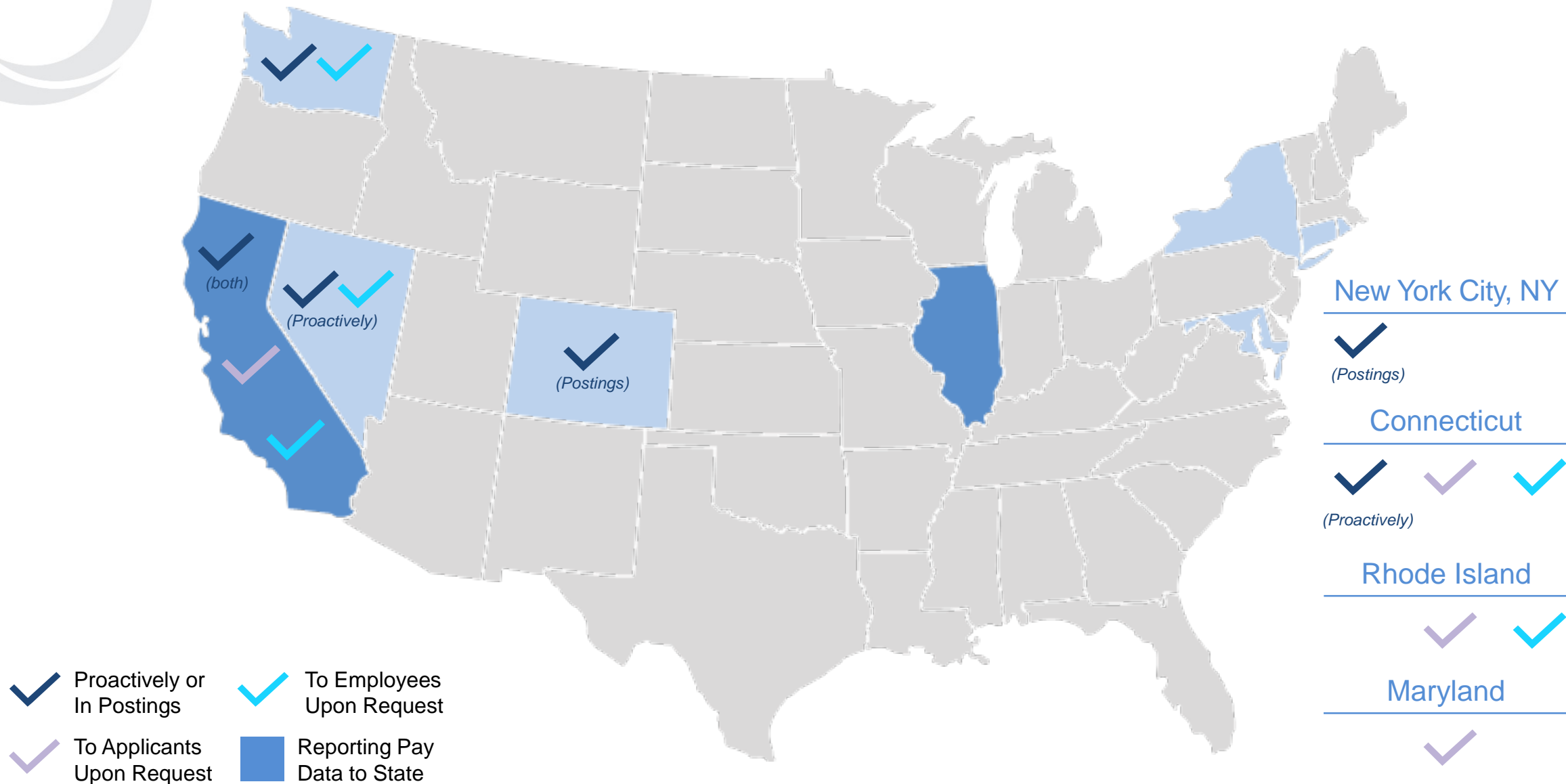
- “Wage range” or “pay scale” for a position
- Sometimes other compensation and benefits

What pay data must be reported?

- Annual earnings or wages
- Broken down by sex, race, ethnicity
- Within each job category



Laws Effective Now or by 1/1/2023



* There are also several other local jurisdictions with laws

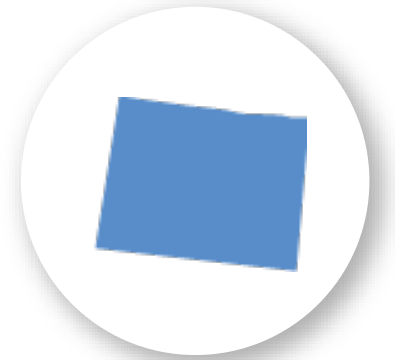
NEW LAWS MAKING HEADLINES

COLORADO, NEW YORK, WASHINGTON,
CALIFORNIA, & ILLINOIS



Colorado Equal Pay for Equal Work Act

- **Effective Date:** January 1, 2021
- **Coverage:** 1+ employee in Colorado
- **Scope:** Based in or could be performed in Colorado
- **Content:** “Good faith estimate” of compensation or range + general description of other compensation and benefits
- **Promotion Notices:** Reasonable efforts to make promotion opportunities known to all Colorado employees before decision
- **Records:** Job description and wage rate during employment + 2 years after
- **Enforcement:** CDLE has moved from "education" phase to assessing fines



New York City

- **Effective Date:** November 1, 2022
- **Coverage:** 4+ employees (1 in NYC)
- **Scope:** Can or will be performed, at least in part, in NYC
- **Content:** In each advertisement for job, promotion or transfer opportunity
 - Compensation or range of compensation
 - Range is minimum and maximum salary or hourly wage for position
 - "Good faith" belief would pay at time of posting
- Ithaca, New York, and Westchester County, New York have also passed similar laws, with another pending in Albany, New York.



New York State (If Signed by Governor)

- **Effective Date:** 270th day after signed into law
- **Coverage:** 4+ employees (1 in NY)
- **Scope:** Can or will be performed, at least in part, in NY
- **Content:** In each advertisement for job, promotion or transfer opportunity
 - Compensation or range of compensation
 - Range is minimum and maximum annual salary or hourly range for position
 - "Good faith" belief of accuracy at time of posting
 - Job description (if one exists)
 - If applicable, statement that compensation is based solely on commission
- **Records:** Necessary to show compliance (e.g., wage rate history, job description if exists)



Washington

- **Effective:** January 1, 2023
- **Coverage:** 15+ employees (1 in WA)
- **Scope:** Unclear
- **Content:** In each posting for each opening
 - Hourly/salary compensation or range
 - General description of other compensation and benefits



California – Pay Disclosures

CURRENT LAW

- Pay scale for position to applicant upon reasonable request

COMING SOON: SB 1162

- **Effective:** January 1, 2023
- **Scope:** Unclear
- **Content:** Pay scale for position
 - On the face of any posting (for employers with 15+ employees)
 - To applicants upon reasonable request
 - To current employees upon request
- **Records:** Job title and wage rate history during employment + 3 years after



California – Pay Data Reporting

- **Deadline:** Second Wednesday of May (May 10, 2023)
- **Coverage:** Private employers
 - *Employee Report:* 100+ employees nationwide
 - *Contractor Report:* 100+ employees hired through labor contractors
- **Content:**
 - Number of EEs by race, ethnicity, and sex in each given job category
 - Median and mean hourly rate for each combination within each job category
- **Other:**
 - Report by establishment
 - Certified by corporate officer
 - No “individually identifiable information” made public



Illinois – Equal Pay Registration Certificate

- **Deadline:** Assigned by IDOL but not later than March 23, 2024
- **Coverage:** 100+ employees in (or based in) Illinois
- **Process:**
 - Submit contact information once covered
 - Submit application by March 23, 2024, or within 120 days of assigned deadline:
 1. Copy of most recent EEO-1 Report
 2. [Equal Pay Compliance Statement](#) (certified by officer or agent)
 3. "Wage records" with employee-level data about Illinois workers
 - Recertify every 2 years



Illinois – Equal Pay Compliance Statement

Officer or agent must certify:

1. Compliance with related laws (e.g., Title VII)
2. Average compensation for female and minority employees is not consistently below average compensation for male and non-minority employees within each major job category of EEO-1, accounting for factors such as length of service, experience, skill, etc.
3. Employer does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex
4. Wage and benefit disparities are corrected when identified
5. How often wages and benefits are evaluated
6. Approach employer takes in determining what level of wages and benefits to pay employees



KEY DECISION POINTS

Disclosing Pay: Which Law Applies?

- Where is the company based?
- Where does the company have employees?
- Where will the work for the role be performed?
- Where will the hiring process happen?
- Where does an applicant or employee live?
- Where is the applicant's or employee's base location?



Disclosing Pay: Patchwork vs. Unified Approach

- Does it make sense to go jurisdiction by jurisdiction?
 - Each law differs in when, to whom, and what to disclose and for records.
 - Fourteen jurisdictions have already passed laws.
 - Sixteen additional jurisdictions have proposed laws.
- Or would a single nationwide approach work better?
 - On June 8, 2022, [Microsoft](#) announced it will disclose salary ranges in all job postings across the U.S. by January 2023





Disclosing Pay: Setting Ranges

- Generally, the laws require that a range be a "good faith estimate" of what the employer "reasonably believes" as of the time of the posting or disclosure it would pay for the position..
 - How will we set the range?
 - Will the same approach apply to every role?



Disclosing Pay: Adjusting for Markets

- Does it make sense to create separate postings for roles to be performed in different markets?
- Or should we provide compensation based on different markets in each posting?
- Or should we discuss geography as a consideration of actual compensation with each individual applicant?

Disclosing Pay: Other Compensation & Benefits

- Where applicable, does it make sense to provide other compensation and benefits on the face of each posting?
- Or should we provide a hyperlink to other compensation and benefits for each posting?





Disclosing Pay: Disclaimers

- What will we include in actual postings?
- Will we include disclaimers?
- If we include disclaimers, how will we draft them to communicate the possible differences between the advertised and actual compensation?

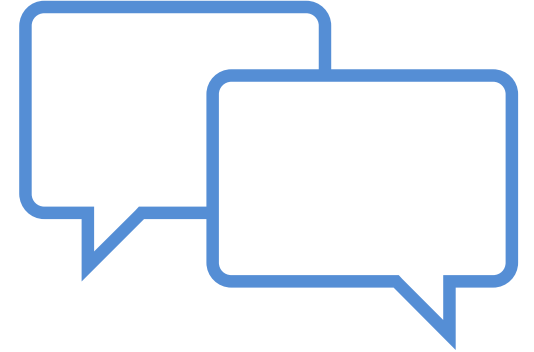


Disclosing Pay: One-to-One Disclosures

- If we take a single, nationwide approach to job postings, will we do the same for individual disclosures?
- Where we disclose compensation directly to applicants or current employees, how will we communicate it?
- Will we put it in writing or provide it verbally?
 - If we put it in writing, where?
 - If we deliver it verbally, how?

Disclosing Pay: Messaging

- How will we message our policy to the public?
 - To our workforce?
 - To individual applicants?
 - To current employees?
- How will we explain differences in the range provided and the actual pay?
- How will we handle increased questions about setting compensation?



Disclosing Pay: Other Compliance Considerations

- Will we check how often actual pay falls within the posted range?
- How will we ensure that third-party postings are compliant?
- How will we treat contingent workers?
- How will we train HR staff and managers?



Reporting Pay Data: General Considerations

- When will we start preparing the report?
- If an agency audits us, how will we prove the report was accurate and truthful?
- Will we audit ourselves? If so, how?
- Who will certify the report?





Reporting Pay Data: California

- What pay period will we use for our "snapshot"?
- Do we need to submit a supplemental report for labor contractors?
- How will we collect data from labor contractors?
 - When should we start working with labor contractors?
 - What can we ask labor contractors to coordinate collection of data?



Reporting Pay Data: Illinois

- How will we calculate the average for certification?
- How will we ensure that our certifications are truthful?
- How will we import data about individual Illinois workers?

BEST PRACTICES



Best Practices for Pay Transparency

- Adopt a compensation philosophy that includes approach to pay transparency.
- Implement a plan for compliance with pay transparency laws, including whether to take a uniform approach.
- Consider training, talking points, and guidance for managers and others involved in making decisions about compensation for questions around pay transparency.
- Develop a plan for keeping up with new pay transparency developments.
- For global companies, be mindful of international pay transparency requirements.
- Periodically audit actual compensation against the disclosed ranges to ensure the ranges are reasonable.



Best Practices for Pay Equity

- Develop objective, meaningful compensation guidelines designed to ensure employees are paid fairly and competitively and consistent with applicable legal standards.
- Pay attention to how starting pay decisions are made. Develop ways to document starting pay decisions.
- Conduct regular EEO, non-discrimination and anti-bias training for pay decision makers and HR employees (if not all employees).
- Promptly and thoroughly investigate, document, and, as appropriate, remedy internal EEO/pay equity complaints and inquiries
- Conduct regular, robust internal pay equity analyses under attorney-client privilege.
- Expand internal privileged audits to include other employment practices such as performance ratings, promotions and job leveling.
- Develop short-term and long-term strategies for remediation that go beyond simply making reactionary pay adjustments.



THANK YOU





QUESTIONS?