

HOW CAN PEOs AND STAFFING AGENCIES PREPARE FOR EVOLVING PAY TRANSPARENCY AND EQUITY TRENDS IN 2023? 3 QUESTIONS TO CONSIDER

Insights
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Pay transparency is one of the hottest trends impacting the workforce today, and staffing companies and PEOs need to keep up with new laws and evolving expectations to stay compliant and competitive in 2023 and beyond. Pay transparency affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. Moreover, your industries have their own unique challenges, making it critical for you to understand the current trends and create a plan to keep your business and your clients in compliance. We'll dive deep into this topic during the Pay Transparency and Equity session at the [Fisher Phillips' PeopleLaw Conference from February 22-24](#), but this Insight provides an overview of the topic and three questions to consider as you prepare for the year ahead.

1. How Does the Patchwork of State Laws Raise Compliance Challenges?

A growing number of jurisdictions are requiring employers to post salaries or pay ranges in job ads. Colorado was the first state to enact this requirement in 2021 and other jurisdictions – including California; Washington State; and New York City, Ithaca, and Westchester, New York – followed suit. Additionally, New York State's salary disclosure law will take effect later this year.

This patchwork of new laws makes multistate compliance complicated. Notably, while these laws have the same general pay disclosure requirement, the details vary. Consider the following examples:

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- In Colorado and Washington, the laws apply to all employers who are seeking candidates in the respective state, while California's law applies to employers that have 15 or more employees nationwide with only one employee needing to be located in California.
- Moreover, Colorado and Washington require employers to post the compensation range and a general description of all employment benefits, whereas California employers are required to provide only the salary or hourly range and may voluntarily add information about other compensation and benefits (such as bonuses, tips, or other benefits).
- New York State's law – which takes effect in September – applies to employers with four or more employees. Advertisements for temporary jobs posted by temporary help firms, however, are excluded from compliance with New York's law (and some local laws) but such ads are included in other jurisdictions.

So, you'll need to review each law carefully to determine whether you are covered and what is required. We expect to see additional states and cities consider similar laws in 2023. But even if the areas in which you operate do not pass such broad measures, there are plenty of other pay transparency initiatives across the country for you to take into consideration.

For example, some jurisdictions – such as Connecticut, Nevada, and Rhode Island – require employers to proactively disclose salary ranges to candidates during the hiring process, but not in job listings. Others require employers to provide pay ranges to candidates upon request (including Maryland, and Cincinnati and Toledo, Ohio).

Want to check the laws in your jurisdictions? You can review pay equity initiatives by checking out the [FP Pay Equity Map](#).

2. How Does Remote Work Change the Game?

Unless you or your client operates a brick-and-mortar business in a single jurisdiction, you'll likely have to grapple with multiple pay transparency laws – especially if you're seeking remote workers. Here are a few examples why:

- In California, the Division of Labor Standards Enforcement interprets the state's new law to mean that the pay scale must be included in the job posting "if the position may

ever be filled in California either in-person or remotely.” Therefore, if you are a covered employer, you may want to comply with the job posting requirements if the job is either physically located in California or could be performed remotely from California.

- In Colorado, employers are required to include compensation and benefits in job postings for all jobs tied to a location in Colorado or a remote job. The Department of Labor and Employment has taken the position that a company that omits compensation by posting that a remote job is available for anyone in any location except for Coloradoans is not compliant with the state’s act.
- In Washington, all employers looking for candidates in the state – even remote workers – must comply with the state’s job posting disclosures.
- In New York State, the statute expressly applies to any jobs that can or will be performed, at least in part, in the state of New York. This means the statute seemingly applies to all listings for remote positions that can be performed wherever the employee resides, because the position could be filled by an applicant who lives in New York who would thus work remotely in the state. Accordingly, the statute has reach beyond just employers with a physical presence in the state, seemingly applicable to just about every employer anywhere in the country with even just a remote workforce.

Thus, rather than developing different job postings to satisfy various state and local laws, you and your clients may want to create a single job posting for each role that complies with the most restrictive requirements. Importantly, clear communication with your clients about the need to comply with these new laws is essential when it comes to your job postings.

3. Are Pay Data Reporting Requirements Coming to Your Location?

Pay data reporting might be the next big trend at the state and local level. Many large employers are familiar with the Equal Employment Opportunity Commission’s (EEOC’s) brief collection of employees’ pay data and hours worked on EEO-1 reports. The practice was meant to identify pay gaps and help the EEOC investigate pay discrimination – but the

data collection was highly controversial and ultimately deemed unnecessarily burdensome on employers.

Although the EEOC's requirement was short lived (at least for now), California lawmakers who supported the rule approved their own state version in 2020. It requires private employers with 100 or more employees to annually report to the state detailed pay data categorized by gender, race, and ethnicity.

As you likely know, what happens in California doesn't always stay in California. Already, Illinois passed a similar law in 2021 and other jurisdictions are likely to follow the Golden State's lead in this area. Moreover, the EEOC could revive the requirement at the federal level given that the Biden administration will no doubt push an aggressive regulatory agenda with Congress deadlocked the next two years.

What does this mean for PEOs and staffing agencies? The implications are different for each type of organization. While pay data reporting requirements may create an opportunity for PEOs to prepare and assist with filing reports on behalf of their clients, staffing agencies may have some additional burdens and challenges.

For example, a recent amendment to California's law that goes into effect this year will require employers that hire 100 or more employees through "labor contractors" to file a separate pay data report with demographic and pay information on those employees as well – a change to the law aimed squarely at staffing firms.

As more laws like this pop up, we'll likely see many nuances in state and local reporting requirements, making it essential to keep up with the latest developments. We've only scratched the surface here, but see below to find out how to learn more.

Learn More

We invite you to join us in Marina del Rey, California, for Fisher Phillips' first annual [PeopleLaw Conference](#) on February 22-24, where we'll discuss this – any many other topics – in depth. We'll bring together thought leaders in the PEO, staffing, and gig economy industries to discuss common legal challenges and solutions, and you'll hear from our firm's PEO and Staffing Group lawyers, along with

industry association executives, on the latest trends in a series of engaging and interactive sessions. Each session will provide you practical skills you can put to use right away. You'll also have plenty of time to network with your peers to gain invaluable insights and learn from each other. [You can learn more about the conference and register by clicking through here.](#)

Until then, we will continue to monitor the situation and provide updates as more information becomes available. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. Any questions may be directed to your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [PEO and Staffing Industry Team](#).