



Get Ready for D.C.'s New Pay Transparency Law: 5 Top Answers for Employers

Insights

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Employers in the District of Columbia should review new pay transparency requirements that are expected to take effect this summer and create additional compliance obligations for covered businesses. Mayor Muriel Bowser signed the Wage Transparency Omnibus Amendment Act of 2023 into law on January 12 – and assuming the law passes the 30-day congressional review – it will go into effect on June 30. Here's what D.C. employers need to know about the new legislation and the answers to your top five questions.

1. Which Businesses Are Covered?

All private employers with at least one employee in D.C. are covered under the act. However, questions remain regarding the calculation of "employees." For example, the act does not address whether employees working a hybrid schedule that includes periodic remote work from D.C. would be counted.

2. What Are the Key Provisions?

Wage History Inquiries: Employers are prohibited from screening applicants based on their "wage history," defined as "information related to compensation an employee has received from other or previous employment." This includes a prohibition against requiring that an applicant's wage history "satisfy minimum or maximum criteria" or requiring that an applicant disclose his or her wage history as either a condition of being interviewed or of continuing to be considered for an offer of employment. Employers are also prohibited from seeking an applicant's wage history from a prior employer.

Discussing Compensation: The act expands the protections afforded to employees under the Wage Transparency Act of 2014. Specifically, the new law prohibits employers from retaliating against employees who discuss "compensation," defined as "all forms of monetary and nonmonetary benefits an employer provides or promises to provide an employee in exchange for the employee's services to the employer." Accordingly, this includes both "wages," which was included in the 2014 act, as well as other forms of compensation, such as healthcare benefits.

Pay Transparency: The act requires employers to include in all job listings and position descriptions "the minimum and maximum projected salary or hourly pay" that it believes "is good

descriptions, the minimum and maximum projected salary or hourly pay that it believes, in good faith, it would pay for the opportunity. However, the act does not define “job listings” or “position descriptions.” The act also requires employers to disclose “the existence of healthcare benefits” that the employee may receive prior to the first interview. The legislative history of the act suggests that a simple disclosure that healthcare benefits exist would be sufficient. Notably, the legislative history specifically acknowledges the challenges for small businesses to provide detailed information “regarding the schedule of benefits without more knowledge of their staffing capabilities.”

3. What Are the Notification Requirements?

Under the act, employers are required to post a notice to employees about their rights under the act in a “conspicuous place in at least one location where employees congregate” in the workplace.

4. What Relief is Provided to Employees?

The act does not create a private right of action, but it does empower the D.C. Attorney General to investigate possible violations, issue subpoenas, compel the attendance of witnesses and the production of documents, take depositions and seek affidavits, and bring civil actions. The act also allows the Attorney General to seek restitution or recover injunctive, compensatory, or other authorized relief for any individual or for the public at large, as well as attorneys’ fees and statutory penalties, if the Attorney General prevails.

5. What Should Employers Do Now?

D.C.’s law is similar to laws enacted in many states around the country, and accordingly, many employers are already familiar with requirements like these. Nevertheless, employers should continue to monitor [Fisher Phillips’ Pay Equity Interactive Map](#) to track similar laws across the country and the obligations under each, which may vary. You should also consider reaching out to your attorney to conduct a pay equity audit to ensure compliance with these new laws. Working with an attorney on an audit also preserves the attorney-client privilege, which may foreclose certain information from being discoverable in litigation.

Conclusion

We will continue to monitor developments in D.C. and throughout the country on pay transparency and pay data reporting. Make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. If you have questions about the proposed legislation, please contact your Fisher Phillips attorney, the authors of this Insight, any member of our [Pay Equity Practice Group](#), or any attorney in our [D.C. office](#).

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