

FEDERAL CONTRACTORS WOULD NEED TO DISPLAY SALARY RANGES UNDER PROPOSED PAY TRANSPARENCY RULE: HERE'S WHAT YOU NEED TO KNOW

Insights
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The Biden administration recently announced new pay transparency measures intending to reduce wage gaps based on gender and race. The White House unveiled these new efforts on January 29, which marked the 15th anniversary of the Lilly Ledbetter Fair Pay Act. Like many of the state laws aimed at closing the wage gap, President Biden's multi-pronged approach includes salary history bans, reinforcement of equal pay obligations, and a proposal that would require federal contractors and subcontractors to disclose expected salary ranges in job postings. So, what does this mean for federal contractors?

New Requirements Likely Coming Soon

Currently, women earn 84 cents on average for every dollar paid to men, and disparities are even greater for women of color. The Biden Administration says [its proposals](#) would help "federal contractors recruit, diversify, and retain talent, improve job satisfaction and performance; and reduce turnover — all factors associated with promoting the economy, efficiency, and effectiveness of the federal contractor workforce."

But you don't need to do anything just yet. The posting of salary ranges still remains in the proposal phase. Specifically, the Federal Acquisition Regulatory (FAR) Council is proposing a government-wide procurement policy that would:

- Prohibit contractors and subcontractors from asking and/or using an applicant's compensation history; or

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- Require contractors and subcontractors to disclose in job advertisements and postings the compensation to be offered to an applicant for any position to perform work on or in connection with the government contract.

The proposed rule would be applicable to acquisitions at or below the Simplified Acquisition Threshold and to commercial products and services, including commercially available off-the-shelf items.

Contractors and subcontractors operating in states that have enacted pay transparency laws, such as Colorado, California, and Washington, are likely familiar with this type of posting requirement, as those states have enacted legislation regarding wage transparency in job postings in the past several years. Contractors and subcontractors that are unfamiliar with this requirement should begin reviewing your compensation structures and ranges to prepare for potential implementation of this proposed rule. [Comments on the proposed rule will be accepted through April 1.](#)

Review Your Pay Equity Programs

In the meantime, you may want to take the following steps to ensure your pay equity practices are in order:

Review Current Requirements Under Federal and State Law. You should note that just about every state in the country has passed legislation to complement the federal Equal Pay Act, which mandates equal pay for equal work. Under federal law, employees must be compensated the same when they perform “substantially equal” work in the same “establishment” on jobs requiring equal skill, effort, and responsibility, and performed under similar working conditions. Equality in pay includes all forms of compensation, including base salary or wages, overtime, bonuses, benefits, and any other perks or remuneration.

Notably, most states have pay equity laws that are more far-reaching than federal law and may require equal pay for “substantially similar” work. You can explore the pay equity laws in your jurisdictions through Fisher Phillips’ [Pay Equity Interactive Map](#) by simply clicking on each state.

Consider Performing an Audit. You should be aware of the potentially significant financial consequences of pay equity claims and consider conducting a pay audit to determine which employees perform comparable work, ensure

employees are being paid fairly, and determine whether your policies and practices comply with new laws.

Before embarking on this analysis, however, it is recommended you work with counsel so that the results of the audit are protected by the attorney-client privilege.

Conclusion

We will continue to monitor developments on this topic. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. Please contact your Fisher Phillips attorney, the author of this insight, or any attorney in our [Affirmative Action and Federal Contract Compliance Practice Group](#) or [Pay Equity Practice Group](#) with questions.