

PAY TRANSPARENCY IS ON THE HORIZON IN NEW JERSEY: HERE'S WHAT EMPLOYERS NEED TO KNOW

Insights
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New Jersey could be the next state to enact a pay transparency law – which means employers should have an action plan ready for compliance. New Jersey already has one of the most robust pay equity laws in the country, and a bill that unanimously passed the state's Senate would add to employers' obligations. If passed by the Assembly and signed by the Governor, the law would require you to disclose certain compensation and benefits information in job listings and for promotional opportunities. What do you need to know about this pending legislation and what should New Jersey employers do next to prepare?

[Ed. Note: The Assembly passed the bill on September 26, sending the bill to the Governor for finalization.]

Background on New Jersey's Pay Equity Law

- **Pay Protections.** New Jersey's [Diane B. Allen Equal Pay Act](#) made history as the most expansive pay equity law in the country when it was first enacted in 2018. Under this law, which added to the Law Against Discrimination (LAD), employers are prohibited from paying wages to a member of a protected class at a rate of compensation (including benefits) that is less than the rate paid to employees who are not members of the protected class for substantially similar work. The protected classes include all categories recognized under the LAD, such as race, creed, color, national origin, ancestry, age, affectional or sexual orientation, pregnancy, sex, gender identity or expression, and disability.

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- **Exceptions.** The exceptions for a pay disparity are limited to decisions based on a seniority system, a merit system, or legitimate bona fide factors that are job-related with respect to the position in question, based on a legitimate business necessity and account for the entire wage differential.
- **Employer Obligations.** New Jersey employers are prohibited from discriminating against or discharging an employee for exercising their rights under the law, including requesting, discussing, or disclosing pay-related information. Additionally, New Jersey employers cannot ask job applicants about their salary history.

Local Pay Transparency Laws

- **Jersey City.** Notably, employers with a principal place of business in Jersey City must follow [local requirements](#). Jersey City employers with five or more employees or independent contractors must include a wage range on any job posting circulated within the city. The job posting must include the minimum and maximum base salary or hourly wage. The penalty for non-compliance is a fine of up to \$2,000.

New Pay Transparency Legislation

- **Covered Employers.** [Senate Bill 2310](#) – which was introduced in January – would require pay transparency for promotional opportunities and employment listings. The requirements would apply to New Jersey employers with 10 or more employees over 20 calendar weeks that do business, employ workers, or take applications for employment in the state.
- **Posting Requirements.** Under this bill, New Jersey employers would need to disclose the hourly wage or salary (or range) and a general description of benefits and other compensation programs for which the employee would be eligible. You would need to include this information in each posting for a new job, as well as transfer opportunities that are advertised externally or internally. Notably, you would still have some flexibility to increase the wages, benefits, and compensation when making an offer of employment.
- **Internal Announcements.** With respect to promotional opportunities, you would be required to make reasonable

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efforts to announce or post the opportunities to all current employees in the affected departments prior to making a promotion decision, unless the decision is based on years of experience or performance.

- **Penalties.** The proposed legislation also includes penalties for non-compliance: \$300 for the first violation and \$600 for each subsequent violation. Failure to comply with the pay transparency requirements for one promotional opportunity, job opening, or transfer opportunity would be considered one violation for all listings, even if that promotion, opening, or transfer opportunity is listed on multiple forums or postings.
- **Temporary help service firms and consulting firms** also would be required to provide pay and benefit information to an applicant for temporary employment during the interview or when they are hired for a specific job opening. However, they would not be required to provide this information in a job posting that is meant to identify qualified applicants for potential future job openings.

What Should Employers Do Now?

- **Track Pending Legislation.** While the pay transparency bill unanimously passed the Senate, it still needs to be voted on by the Assembly and signed by Governor Murphy to become law.
- **Review Bigger Trend.** We anticipate that New Jersey will follow the trend in [other states](#) – including recent activity in [Massachusetts](#), [Vermont](#), [Minnesota](#), [Maryland](#), and the [District of Columbia](#).
- **Prepare for Potential Changes.** Now is an ideal time to start identifying pay ranges for certain positions so you are ready to meet any future disclosure requirements.
- **Consider a Pay Equity Audit.** It may also be a good time to consider a pay equity audit to ensure your pay practices are compliant with all federal and state equal pay laws.
- **Consult with Experienced Legal Counsel.** Work with your counsel to learn more about the benefits of a pay equity audit and other best practices to ensure your organization remains compliant with pay transparency laws around the country.

Conclusion

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