

HOW CAN PEOs PREPARE FOR EVOLVING PAY TRANSPARENCY AND EQUITY TRENDS? 3 KEY QUESTIONS TO CONSIDER

Insights
Oct 16, 2024

Pay transparency is one of the hottest trends impacting the workforce today. It affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. Moreover, PEOs and their customers have their own unique challenges, making it critical for you to understand the current trends and create a plan to keep your business and support customer compliance efforts. Here are three key questions your organization should keep in mind to ensure you are up to speed with the modern state of pay transparency and equity.

1. How Does The Patchwork Of State Laws Raise Compliance Challenges?

A growing number of jurisdictions require employers to post salaries or pay ranges in job ads. You can review [FP's Interactive Pay Equity Map](#) to get a full lay of the land, but here's a quick overview.

Colorado was the first state to enact this requirement in 2021 and other jurisdictions – including California, Washington State, and New York followed suit. This patchwork of new laws makes multistate compliance complicated. Notably, while these laws have the same general pay disclosure requirement, the details vary.

- For example, in **Colorado** and **Washington**, the laws apply to all employers who are seeking candidates in the respective state, while **California's** law applies to

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employers that have 15 or more employees nationwide with only one employee needing to be located in the state.

- 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's** law 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.

You will need to review each law carefully to determine whether yours are covered and respond to customer questions. We expect to see more states and cities consider similar laws in the upcoming year.

In addition, 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, Cincinnati, and Toledo, Ohio).

2. How Does Remote Work Change The Game?

The physical location of workers can be a real challenge when it comes to pay transparency requirements. Here are a few examples of 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." Thus, 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



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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**, any job, promotion, or transfer opportunity that will physically be performed outside of the state but reports to a supervisor, office, or other work site in the state must also include pay or salary information. This includes remote positions.

Thus, rather than developing different job postings to satisfy various state and local laws, employers may want to create a single job posting for each role that complies with the most restrictive requirements. Most importantly, clear communication with your customers about their compliance obligations will be very important for PEOs who provide that level of compliance support.

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

Pay data reporting might be the next big trend at the state and local levels. 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 for employers.

Although the EEOC's requirement was short-lived, the Biden administration is poised to pick this up again as [the EEOC said it plans to propose a rule regarding its "authority to collect pay data or related information as reasonable, necessary, or appropriate"](#) for the enforcement of Title VII and the Equal Pay Act. The proposal is expected to be released in January 2025.

In the interim, state lawmakers have moved forward with pay data reporting requirements that collect demographic data. For example, California requires private employers with 100 or more employees to annually report to the state detailed pay data categorized by gender, race, and ethnicity. Illinois

now has a similar law, and bills requiring pay data are pending in various states and localities including New York City.

What Does This Mean for PEOs?

These pay data reporting requirements may create an opportunity for PEOs to support customers, possibly by assisting with customer filing obligations. 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.

Conclusion

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

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