

# AN EMPLOYER'S GUIDE TO PAY EQUITY COMPLIANCE AS STATE RULES EVOLVE

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## An Employer's Guide to Pay Equity Compliance as State Rules Evolve

Employers around the country need to comply with a growing patchwork of laws on fair pay, pay data reporting, and transparency in job ads and the hiring process. Compliance has become increasingly complex as more states and cities pass their own nuanced requirements that vary from location to location, and the stakes are getting higher as the penalties for violations rise. Here's an overview of key federal, state, and local pay equity trends, as well as practical tips for compliance.

### Quick Overview of Federal and State Equal Pay Laws

**Purpose:** The goal of pay equity and transparency laws is to close pay gaps and give employees more information to understand how their compensation compares to their peers and the market, and in turn, more power to correct past inequities based on gender, race, and other characteristics.

**Themes:** For over sixty years, the federal Equal Pay Act has required equal pay for men and women for substantially equal work. Many states have built on the federal law by, for example, extending protections beyond gender to cover race, age, and other protected characteristics. State laws may also limit the defenses employers can raise to justify pay differences and require those pay differentials to be job-related and consistent with business necessity. These differentials should be applied consistently across comparators and documented by the people making pay decisions.

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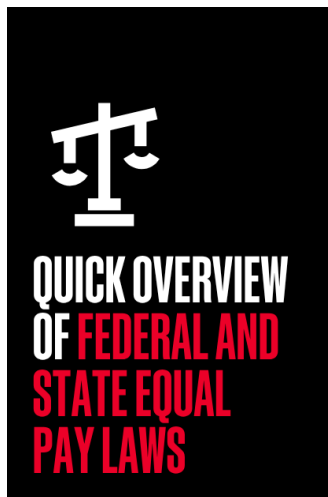
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**Consequences:** The penalties for violations can be steep. Under the federal law, a plaintiff who prevails is entitled to the full wage differential plus an equal amount in liquidated damages and attorneys' fees, covering a lookback period of two or three years.

The cost under state laws can be even more significant. Some states allow liquidated damages of up to 300%, lookback periods for up to six years, and comparator definitions that extend beyond a single location or establishment. **New Jersey**, for example, allows comparators to be drawn from anywhere in the company.

### Compliance Tips:

- Document pay decisions at the time they're made. Record the specific factors behind compensation decisions, including hire, promotion, and adjustment decisions. Make sure decision factors are consistently applied, and that the people making those decisions can explain the reasons.
- Note that several state pay equity laws require employers to maintain records for specified periods, and failing to produce them in litigation can result in findings against you.



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## Salary History Bans Add Another Layer

One of the biggest trends over the last decade involves state-level bans on salary history inquiries. These laws generally prohibit employers from asking job applicants about their prior pay or relying on it to set compensation.



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The policy rationale is that using a job candidate's prior salary to set their new pay can perpetuate existing pay inequities rather than correct them. Courts have reinforced this point, with some holding that prior pay cannot be used as a standalone justification for a pay differential under federal law even in states without an explicit ban.

Pay transparency laws require employers to include pay ranges in job postings, and in some states, to disclose additional compensation information such as benefits. **Washington**, for example, has one of the strictest laws, which requires salary ranges, benefits information, and other compensation details in any job posting. Several states apply these requirements to internal postings and promotions as well.



- Consider eliminating salary history inquiries from your hiring process (including job applications), even in states without an explicit ban. Relying on prior pay to set compensation creates litigation risk. Instead, consider establishing pay bands and using them to develop transparent salary ranges.
- Audit your job postings for pay transparency compliance. Review all external and internal job postings against the requirements of every state where you post or where applicants may be located.



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## Pay Data Reporting Trends

Pay data reporting is a related obligation that we're seeing pop up in more locations.

**At the federal level**, private employers with at least 100 employees and federal contractors with 50 or more employees and contracts over \$50,000 must file annual EEO-1 reports. These reports show the number of employees in designated job categories, broken down by race/ethnicity and sex. Although a pay data component was briefly added under the Obama administration, it was subsequently dropped. The current administration has not moved to revive it, but several states have established their own requirements, and we expect more to follow.

**California** has the most complex reporting obligations in the country. Private employers are covered if they have at least 100 employees anywhere in the US and at least one employee in California or assigned to a California location. Notably, a separate report is required for labor contractor employees – meaning temporary workers you obtain from a staffing agency – even though those workers are on the agency's payroll. Reports are due on May 13 in 2026 for 2025 data.

Starting next year, three new data fields will be required in California:

- exempt or non-exempt status;
- employment type (full time, part time, or intermittent); and
- number of weeks worked.

Additionally, job categories are expanding from 10 broad EEO-1 classifications to 23 standard occupational classifications. Civil penalties for noncompliance will be mandatory, running up to \$100 per employee for a first failure and \$200 per employee for each subsequent one.

**Illinois** requires covered employers to submit a line-by-line employee report, rather than aggregate data, along with a compliance statement affirming that they meet the state's pay equity requirements. Filing the equal pay certificate is not a safe harbor from pay equity claims or investigations, so audits and remediation efforts are critical. Employees may also request anonymized pay data from the state, limited to their job title, classification, and county.

**Massachusetts** allows employers to satisfy its annual filing by submitting their federal EEO-1 form, but because federal pay data collection has been suspended, no actual compensation data is currently being transmitted to the state.

**New York City** passed a pay data reporting law that took effect in December 2025, though practically speaking, the timeline before employers must actually file is likely three years away. The city must first designate an agency, develop a reporting form, and allow a submission period. Employers with 200 or more employees in the New York City area will ultimately be covered.

#### **Compliance Tips:**

- Determine where your employees are physically located and where they are assigned, since some state reporting obligations, including California's, are triggered by assigned location rather than physical presence. So, remember that remote workers assigned to a covered location may count.
- Don't just check the box for pay data reporting compliance. State agencies use them to target investigations, identify patterns, and support enforcement. These reports can also surface in litigation discovery, so accuracy matters as much as timeliness.
- Designate who in your organization is responsible for each state filing, involve your legal team in that process, and build the data collection systems to accommodate expanding requirements, including California's new data fields taking effect next year.



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## Pay Equity Litigation Trends

Pay equity litigation is growing across the country. In the past few years alone, we've seen a significant number of decisions at both the federal and state level, with high costs for employers.

**Pay Transparency Example:** Under Washington's pay transparency law, the pay you post needs to reflect your actual pay ranges. If you don't include a pay scale in your job posting, it could cost you \$5,000. Litigation is ongoing as to whether there will be strict liability, how big the class could be, and whether it's just the job applied for. But failing to get it right can be problematic in any state.

**Federal Level:** The Equal Pay Act is gender-based only. Courts look closely at whether the employees being compared actually perform substantially similar work at the same location, and plaintiffs who don't adequately allege that similarity have seen their claims dismissed at the pleading stage.

**Additional State Risks:** Many states extend pay equity protections beyond gender to cover race, ethnicity, and other protected classes, and some allow comparators to be drawn from anywhere in the company regardless of location. Notably, a pay practice that's defensible under federal law or in one state may not hold up in another.

**Justifications:** Employer defenses to pay disparities based on experience, education, or geography have held up in some cases and failed in others, depending on how well the employer documented those factors and applied them consistently. In some jurisdictions, cost-of-living differences

between locations where comparators work have supported pay differentials.

### Compliance Tips:

- Reduce your litigation risk by building compliance into your regular practices.
- As mentioned above, document pay decisions at the time they're made, ensure records are properly maintained, and review job postings for compliance with the applicable federal, state, and local laws.



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## The Importance of a Privileged Pay Equity Audit

A pay equity audit is one of the most valuable tools available to employers to reduce litigation risk and prepare for reporting requirements. But how you conduct an audit is equally important.

**Attorney-Client Privilege.** Performing an audit with counsel means the analysis and its findings are protected, at least initially, from disclosure. Pay equity data tells a story about your organization, and you want to understand that story before a state agency or plaintiff's attorney does. Going through the reporting exercise forces you to look closely at your compensation structure, identify concentrations of certain demographic groups in particular pay bands, and ask whether the factors driving those patterns are defensible. Just recognize that if you intend to use the results as a defense in litigation, you'll need to produce them.

**Focus on Compliance:** An audit serves a practical compliance function. Notably, **Massachusetts** offers a safe

harbor for employers that conduct regular pay equity audits and take meaningful steps to address discrepancies. Most states don't offer a safe harbor, but an audit still has significant value. Showing that you identified potential issues and addressed them proactively is a meaningful part of any litigation defense.

### Compliance Tips:

- Build the audit process into your compensation governance plan.
- The goal is to create and maintain a compensation structure that is rational, documented, consistently applied, and capable of withstanding scrutiny from agencies, plaintiffs, and courts alike.



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### Conclusion

Your FP attorney can help you navigate these complex compliance obligations and create an action plan. We will continue to monitor all developments related to pay equity and transparency, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

Additionally, [FP's Pay Equity and Transparency Interactive Map](#) helps employers understand and respond to these changing and new developments in the law, and we encourage you to use this map as a resource. If you have any questions, please contact your Fisher Phillips attorney, the authors of this insight, any member of our [Pay Equity and Transparency Practice Group](#).

