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District of Columbia Joins Trend Toward Greater Pay Transparency

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Executive Summary: On January 12, 2024, the District of Columbia amended the Pay Transparency Act of 2014, joining a growing list of states, counties, and localities to implement more a more expansive pay transparency law. The D.C. Act 25-367 will be effective on June 30, 2024, pending a 30-day congressional review period. The law does not apply to employees of the federal and D.C. governments.

Pay Transparency Required

Employers with at least one employee in the District of Columbia are subject to the requirements of the new law. Covered employers are required to disclose, in all job postings, the lowest to highest salary or hourly pay range that the employer “in good faith believes at the time of posting it would pay for the advertised job, promotion, or transfer opportunity.” Moreover, employers must inform applicants of the available healthcare benefits prior to their first interview. Employers are not required to include this information in the job posting.

Prohibition Against Asking for Prior Pay

Currently, 22 states and 22 localities prohibit employers from asking applicants for prior pay information. D.C. Government agencies have been prohibited from asking applicants for this information since 2017. D.C. Act 25-367 extends that prohibition to private employers. Covered employers are prohibited from requesting or requiring applicants to disclose their prior wage history or seeking this information from applicants’ prior employers.

Notice Requirements

The law further requires covered employers to post a notice in the workplace informing employees of their rights under the new law. Although not stated in the Act, employers with remote workers should consider making the notice available electronically on the company intranet or where other employment policies and important notices are posted.

Enforcement and Potential Costs of Noncompliance

The legislation gives the DC Attorney General the authority to investigate alleged violations, and if necessary, bring a civil action against an employer for restitution or for injunctive, compensatory, or other relief. Moreover, if the lawsuit is successful, the AG may be entitled to reasonable attorneys’ fees and costs.

Compliance Tips

- » While the legislation is under review, employers should consider taking steps to prepare for compliance with the new pay transparency law.
- » Implement a policy prohibiting managers and Human Resources and Compensation professionals from asking applicants about their prior pay.
- » Review job descriptions to ensure they reflect the current duties of the position and level of responsibility.
- » Confirm that all positions are assigned to the correct pay grade and/or level within the compensation system.
- » Determine whether there are any employees paid above or below the appropriate pay range for their position. If any employees are outside their assigned range, confirm why and move the role to the appropriate grade/range.
- » Update the company's compensation policy, if necessary.
- » Prepare FAQs and other training materials for managers and members of the compensation team. The FAQs should address questions the compensation team, management, and members of the Human Resources Department may receive from employees and applicants.
- » Reformat job postings templates to include the good faith minimum and maximum projected salary or hourly wage for all positions.
- » Implement a practice to ensure that all applicants are informed of available healthcare benefits prior to their first interview.
- » Post a notice making employees aware of their rights under the DC Pay Transparency law.

The Bottom Line

The gender and race/ethnicity pay gap remains top of mind for legislatures, enforcement agencies, and employees. "Transparency" has been identified as the key to closing the pay gap. Employees are permitted to discuss their pay and the pay of others in workplace. Employers in most jurisdictions are prohibited from asking applicants about their prior pay history. State pay data reporting is expanding and the EEOC is on the cusp of announcing a new Component 2 pay data report. The requirement that employers include pay ranges in job postings is the latest tool to "attack the gap". It is critical that employers stay abreast of the rapidly changing pay equity landscape and periodically assess their compliance with the web of pay equity laws.

If you have any questions regarding this Alert, please contact the author, Consuela Pinto, Partner in our Washington DC office and member of FordHarrison's Pay Equity Group at cpinto@fordharrison.com. Of course, you can also contact the FordHarrison attorney with whom you usually work or any member of the practice group.



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