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Wage & Hour Law Update

Washington Updates Guidance On 2023 Pay Transparency Requirements

By Sherry L. Talton on October 10, 2022

Washington State's Employment Security Department recently released a draft administrative policy with updated guidance on the modified pay transparency requirements beginning January 1, 2023. This draft policy aims to clarify issues raised by stakeholders in the feedback process for the development of the final administrative policy. The draft policy gives some new insight on several important topics.

Employers Covered

The guidance clarifies that the 15-employee threshold "includes employers that do not have a physical presence in Washington, if the employer has one or more Washington-based employees." Covered employers sponsoring foreign national employees for legal permanent residence ("green cards") through the PERM process will have to comply with these requirements when conducting PERM recruitments.

Job Posting Defined

Job postings include openings for internal transfers as well as remote jobs, according to the new guidance. Stating in a posting that the employer will not accept Washington applicants does not excuse compliance with this law.

Information Required

Each posting must include "the wage scale or salary range and a general description of all the benefits and other compensation for a specific available position to be offered to the hired applicant." The new guidance provides detailed examples of information that should and should not be included. For example, the wage scale/salary range should have a low and high number,

rather than open-ended descriptions, such as “up to \$29/hr” or “\$60k and up.” Any starting pay or range should be specified. If there are multiple levels for a job, the pay scale for each level should be provided. If the employer offers a different job than what the applicant applied for, the employer should provide the postings for both jobs.

Postings also must include a general description of all benefits and other compensation. Benefits include items such as health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals than the minimum required by law, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits. The guidance explains that “other compensation” can be discretionary bonuses, stock options, travel allowance, relocation assistance, profit-sharing, or other forms of compensation that would be offered to the hired applicant along with their established salary range or wage scale. Employers need *not* include monetary values but providing them does not excuse the requirement of the general description.

The guidance states that employers should update postings as this information changes.

The guidance also addresses how to use links regarding benefits and other compensation. The posting must have the “general description” of the benefits and other compensation, but employers can choose to link to more details, which must remain updated. If the benefits and other compensation information is available on the original or subsequent web pages, then the information needs to only be listed at least once. According to the Department, “[i]t is the employer’s responsibility to assure continuous compliance with functionality of links, up to-date information, and information that applies to the specific job posting, regardless of any use of third-party administrators.”

If you have any questions about the draft guidance, the upcoming pay transparency requirements, or any other wage and hour question, please contact a Jackson Lewis attorney.
