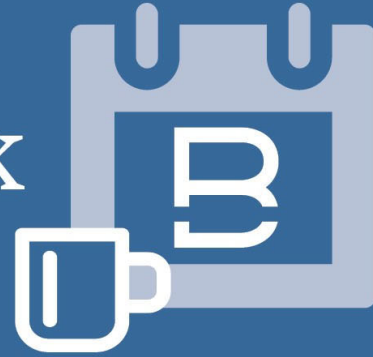


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Addressing pay inequity with pay-transparency laws

Olivia Liz-Fonts

“How much are you being paid?” is often followed by an awkward silence. What was once considered a taboo topic is now a growing trend across the country. Since the passing of the Equal Pay Act in 1963 and Title VII in 1964, the concept of pay equity has continued to evolve beyond banning pay discrimination. For many years, federal and state laws protected employees by prohibiting employers from adopting policies that restrict an employee’s ability to discuss their wages with other employees. The focus has since expanded from not only protecting current employees but also prospective candidates.

In the last six years, about half of the states (in addition to the District of Columbia) have established state and/or local laws that restrict an employer’s ability to seek pay history from applicants. Though applicants may voluntarily provide pay history, some states prohibit employers from refusing to hire, interview, promote or employ job applicants based on the decision not to provide pay history. This “don’t ask—don’t tell” approach is intended to disrupt the cycle of unequal pay by limiting an employer’s reliance on past pay in determining future pay. Although this type of policy has a major effect on pay disparity, many states have moved from such passive regulations to legislation that requires employers to actively disclose wage information. This shift has led to a number of states enacting pay-transparency laws.

Pay-transparency laws require employers to provide compensation information at various stages of employment. The motivation behind these laws is to close the wage gap and promote fairness by increasing transparency around compensation. The degree of transparency can range from employers sharing a salary range on a job listing, to disclosing how salaries are determined and even sharing individual employee salaries.

For example, in New York, what began as a local law has recently expanded to statewide legislation known as the “Pay Transparency Law.” Effective September 2023, employers advertising jobs in New York are

required to disclose the minimum and maximum annual base salary or hourly wage for a job, promotion, or transfer opportunity. The “Pay Transparency Law” applies to all employers located in New York state with four or more employees.

By comparison, Colorado has taken it a step further by expanding coverage of their 2021 Equal Pay for Equal Work Act, which requires employers to make reasonable efforts to announce, post or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to selecting a candidate. When announcing a job opportunity, an employer must disclose: (1) the hourly or salary compensation or relevant range, (2) a general description of the benefits, and (3) the date the application window will close. Effective January 2024, the law will require employers to disclose the identity of the new hire or promoted employee and how other employees can demonstrate interest in similar job opportunities in the future. However, under the amended law, employers will no longer have to provide notice to current employees of career progression promotion. This amendment has an exemption for employers with no physical office in Colorado who employ under 15 remote employees. In addition to expanding employer requirements, the amendment also extends the recovery period for damages for wage discrimination claims under Colorado’s equal pay statute from three years to six years. This amendment will also require the Colorado Department of Labor to create a process to investigate and mediate claims of wage discrimination.

Pay-transparency laws continue to gain momentum with eight states having enacted legislation related to publishing compensation and fifteen others proposing improvements to their current state laws in an effort to close the wage gap. Though not all legislation is robust, states have taken various approaches in an effort to support pay equity. Rhode Island has taken a conservative approach in requiring employers to provide compensation information only upon request. This year, Washington moved away from a similar approach to now requiring employers to disclose salary range or wage scale information including a description of all benefits in the job posting.

These small strides in legislation are having a big impact on the workforce, but employers don’t have to wait for legislation to pass to lean into pay transparency. Embracing pay can benefit employers and employees alike. Focusing on transparency creates the opportunity for employers to uncover and address potential pay inequity. When employers disclose how they make pay decisions, their employees are more likely to trust that their compensation is fair. Subsequently, employees who know their pay reflects their performance and experience are likely to become more committed to their job which ultimately impacts employee retention.

Despite the many benefits of pay transparency, it is important to recognize that not all employers are created equal. Increased transparency may have a negative impact on candidate pools as companies publishing job postings with less competitive pay ranges may experience less candidate interest. Additionally, publishing pay ranges may empower more job seekers to negotiate within the top range knowing other workers are being paid more for the same job. This can lead to pay compression, leaving little difference in employee pay despite differences in tenure, experience, or other compensable factors. Sharing salary ranges on job postings not only informs job applicants but also provides competing organizations with valuable information. Pay-transparency practices may lead to more competitive job offers and poaching of employees.

Whether your state has implemented legislative requirements or not, it is clear that the topic of compensation is no longer off-limits. Pay-transparency laws promote fairness and equity in the workplace that will likely result in greater employee satisfaction and retention.

The [Bassford Remele employment law group](#) continues to monitor state and federal laws regarding pay transparency, especially in Minnesota, where we see an increasing number of cities pass their own municipal ordinances on this subject. If your business needs help complying with these laws and/or implementing its own pay-transparency policies, the Bassford Remele employment law group is here to help.

Olivia Liz-Fonts is a law clerk at Bassford Remele. She is a graduate of the University of St. Thomas School of Law. Ms. Liz-Fonts passed the July 2023 Minnesota bar examination and will become a licensed attorney on October 27, 2023.

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