

# How Oregon employers can prepare for pay transparency compliance

As shown by legislation recently enacted in California and Washington, pay transparency is proving to be a focal point for employer compliance efforts in 2022 and beyond.

Varied in scope and approach across jurisdictions, pay transparency laws strive to reduce or eliminate secrecy surrounding employees' compensation to promote pay equity for employees belonging to historically marginalized groups. Currently, nine states have some form of pay transparency laws. While Oregon does not presently have a pay transparency law, Oregon employers with operations, employees, or job listings posted in California and Washington should take note of these forthcoming pay transparency requirements.

Accordingly, here is a discussion of key takeaways from new pay transparency laws in California and Washington as well as strategic considerations for employers as they prepare for compliance in the year ahead.

## California's pay transparency law

On Sept. 27, California Gov. Gavin Newsom signed Senate Bill 1162, thereby expanding current employer pay transparency requirements starting on Jan. 1, 2023. Under this law, California employers will have to:

- disclose pay scales in job postings. Employers with 15 or more employees must provide the salary or hourly wage rate that the employer "reasonably expects" to pay for the position in all job postings. This includes direct recruitment by the employer or indirect recruitment through a third party.

- disclose pay scales for current employees. Upon request, employers of any size must provide current employees with the pay scale for the employee's current



## COMPLIANCE CORNER

Marley Masser

## COMMENTARY

position.

- report compensation and equity data to the state. Private employers with 100 employees or more must report to the state the mean and median pay of their employees and pay equity data according to protected characteristics like race and gender. Based on existing guidance, employers are subject to these requirements if they have at least one employee in California. Employers should include remote employees in the pay data reports if the employees reside in California or are assigned to a California establishment (regardless of whether they reside in California).

- retain employment records: Employers must retain all records of job titles and wage history for employees throughout their employment and for at least three years after that employee's separation from employment. Failure to comply with the records retention requirement creates a rebuttable presumption in favor of any employee bringing a pay transparency claim under the law.

Aggrieved individuals may file a complaint with the California Department of Industrial Relations (CDIR) or file a lawsuit if they believe a violation has occurred. Remedies may include injunctive relief or any relief a "court deems appropriate." Additionally, the CDIR may assess civil penalties ranging from \$100 to \$10,000 per violation.

However, the law provides a safe harbor for first-time violations when the employer can demonstrate that all job postings for open positions have been updated to include the required pay scale.

## Washington's pay transparency law

In March 2022, Washington Gov. Jay Inslee approved an amendment to expand pay transparency requirements under Washington's Equal Pay and Opportunities Act, also beginning Jan. 1, 2023. Washington's Department of Labor and Industries has since released a draft administrative policy with updated guidance on the modified pay transparency requirements. As clarified by this guidance, Washington employers will have to:

- disclose pay scales in job postings. Employers with 15 or more employees must disclose the position's wage scale or salary range, and a general description of all benefits and other compensation to be offered, in every job posting. This includes employers without a physical presence in Washington, so long as the employer has one or more Washington-based employees. If there are multiple levels of compensation for a position, the pay scale for each level should be provided.

- disclose pay scales for current employees. For prospective or current employees offered a new position, an internal transfer to a new position, or a promotion, the employer must provide the wage scale or salary range for the new position upon request.

Aggrieved individuals may file a complaint with the Washington Department of Labor & Industries or file a lawsuit if they believe a violation of the law has occurred. Available remedies may include actual damages, double statutory damages (or \$5,000, whichever is greater), interest of 1 percent

per month, and payment of costs and attorneys' fees. The WDLI may also assess civil penalties ranging from \$500 for a first violation to \$1,000 or 10 percent of damages for a repeat violation.

## Pay transparency compliance strategies

California and Washington are just two of many states joining the national trend toward pay transparency, and for employers with operations or employees in multiple states, preparing sound compliance strategies is key. Accordingly, covered employers should:

- review employee compensation structures and ensure each position has wage scales or salary ranges in place;
- when including a compensation range in job postings, use a low and high number on each end of the scale (for example "\$50,000 to \$70,000" instead of "\$50,000 and up");
- conduct an internal pay equity study to evaluate current rates and identify areas for improvement;
- document and retain records of all compensation decisions;
- stay up to date with state guidelines; and
- when in doubt, seek guidance from qualified legal counsel.

*Marley Masser is an attorney with Barran Liebman LLP. She can answer questions about pay equity and other employment matters. Contact her at 503-276-2130 or mmasser@barran.com. The opinions, beliefs and viewpoints expressed in the preceding commentary are those of the author and do not necessarily reflect the opinions, beliefs and viewpoints of the Daily Journal of Commerce or its editors. Neither the author nor the DJC guarantees the accuracy or completeness of any information published herein.*