



**DirectEmployers  
Association**

# **SHOW ME THE MONEY! THE DETAILS OF LOCAL PAY DISCLOSURE LAWS FOR PRIVATE EMPLOYERS**

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## HOUSEKEEPING NOTE

- ❑ **This Webinar is PART 2 of a 3 Part Webinar series.**
- ❑ **PART 1:** September 22, 2022 DE Masterclass Roundtable on state salary transparency laws
- ❑ **PART 2: Today's Webinar** will cover ONLY state pay transparency statutes which require employers to provide wage rates or pay ranges to applicants and/or employees applying for a position
- ❑ **PART 3: Our third and final Webinar** on November 30, 2022 will cover in 60 minutes other state laws meant to protect employee rights regarding discussing wage rates

# AGENDA

## ☐ Laws Requiring Pay Disclosure

- What are we talking about?
- General Information to keep in mind
- The three forms of laws regarding pay disclosure

## ☐ Laws Coming Down the Pike

## ☐ Q & A



# LAWS REQUIRING PAY DISCLOSURE

## ❑ What are we talking about?

- Laws requiring employers provide wage rates or ranges to applicants and/or employees applying for a position
- **13** jurisdictions require some form of wage rate or pay range disclosure now or starting January 1, 2023
- **2** jurisdictions may soon implement pay disclosure laws
  - Albany County, NY
  - New York State

# LAWS REQUIRING PAY DISCLOSURE

❑ What are we talking about?

- IMPORTANT NOTE: “LISTING” vs. “POSTING”
  - Not unique terms of art under the pay transparency statutes; used interchangeably.
  - You must read the statutes broadly: “any writing” most likely.
  - Thus, when complying, disabuse yourself of your OFCCP/Affirmative Action knowledge as to “listing” versus “posting.”

# LAWS REQUIRING PAY DISCLOSURE

## ❑ General information to keep in mind

- The type of pay information an employer must provide varies by each jurisdiction
- No law requires an employer to “post” or “advertise”
- Legal shorthand:
  - SOL = statute of limitations
  - Compensatory damages = actual damages the individual suffered
  - Punitive damages = extraordinary award a court may order to “punish” the wrongdoer

# LAWS REQUIRING PAY DISCLOSURE

❑ Some questions to think about as we go through the webinar:

- More hiring off the street in the future?
- Will internal non-competitive “promotions” now become “appointments” to new positions?
- Does using a staffing agency/headhunter avoid triggering a covered “posting” or “advertisement?”
- What do these statutes do to “confidential” searches?
- What if a company believes its pay is a “trade secret?”
- Does “pay” include financial perks/benefits/stock/bonuses/incentives/commissions?
- Does each statute define a “promotion” or can I use my company’s definition of “promotion?”
- Can I just use the “Lowest Common Denominator” or am I forced into a “Checkerboard” situation to satisfy each state’s different requirements?

# LAWS REQUIRING PAY DISCLOSURE

- ❑ The three forms of laws requiring pay disclosure
  - Requiring disclosure in job postings and ads
  - Requiring disclosure during application process
  - Requiring disclosure upon request





# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads

- **California** (effective January 1, 2023)

- Requirements for applicants

- Employers with fewer than 15 employees must provide the pay scale for a position upon reasonable request
    - Employers with 15 or more employees must include the pay scale in any job posting

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **California** (cont'd.)

- Requirements for applicants (cont'd.)
  - Employers with 15 or more employees engaging a “third party” to post, publish, or otherwise make known a job posting must provide the pay scale to the third party, and such third party “shall include the pay scale in the job posting”
- “Pay scale” means the salary or hourly wage range the employer reasonably expects to pay for the position

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **California** (cont'd.)

- Requirements for employees

- Requirement for pay range disclosure in postings for employers with 15 or more employees includes postings for employees

- Statute language is “any job posting”

- Every employer shall provide an employee the pay scale for the position the employee is in “upon request”

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **California** (cont'd.)

- One year SOL
- May file a claim with DLSE (for civil penalties) or as civil litigation (for injunctive and other relief)
- Civil penalty of no less than \$100 and no more than \$10,000 per violation
  - “Totality of circumstances” standard
  - Can correct first violation to avoid penalty

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **Colorado** (January 1, 2021)

- Any employer in Colorado must disclose the hourly or salary compensation or a range (lowest to highest an employer believes in good faith it might pay) and a general description of all benefits and other compensation (can be a link)
- Applies to openings posted in Colorado for work in Colorado or remote work in Colorado
  - Does not apply to postings for out-of-state work

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- Colorado (cont'd.)

- Applies also to promotions for Colorado employees in Colorado or remote work in Colorado
  - Increase in compensation, benefits, status, duties, or access to further advancement
- An employer shall 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 making a promotion decision

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- Colorado (cont'd.)

- Notice must be in writing, by any method reaching all employees, to all employees for whom it may be a promotion, and in advance of any decision
- EXCEPTIONS to promotions requirement
  - Need for confidentiality
  - Automatic promotions
  - Temporary or interim positions
- Must keep records of employee pay

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **Colorado** (cont'd.)

- One-year SOL
- Penalties of not less than \$500 and not more than \$10,000 per violation (based on job opening)
  - Department may waive or reduce penalties for good cause shown
- Entities merely sharing or re-posting job not liable for non-compliant postings (i.e., Unemployment Office)



# **LAWS REQUIRING PAY DISCLOSURE**

☐ Requiring disclosure in job postings and ads (cont'd.)

- **Ithaca, NY** (September 1, 2022)

- Applies to all positions (new hires and promotions) with work location in Ithaca
- Employers with four or more employees and employment agencies must disclose the minimum and maximum salary range in all job postings
  - Based on employer's good faith expectation of compensation
  - Applies also to employers with four or more remote workers in Ithaca

# LAWS REQUIRING PAY DISCLOSURE

☐ Requiring disclosure in job postings and ads (cont'd.)

- **Jersey City, NJ** (April 13, 2022)

- Applies to employers with principal place of business within city and with five or more employees
- Any notice of employment opportunities via print or digital media within city must include minimum and maximum salary or hourly wage, and benefits
  - Minimum and maximum based on employer's good faith belief at time of posting what it would pay

# LAWS REQUIRING PAY DISCLOSURE

- ❑ Requiring disclosure in job postings and ads (cont'd.)
  - **New York City** (effective November 1, 2022)
    - Employers located in NYC with 4 or 4+ employees (including owners), and at least one in NYC
      - Employment agencies also covered, and employers with one or more domestic workers
    - Any advertisement for a job, promotion, or transfer opportunity (not defined) that can be performed in NYC must disclose the minimum and maximum salary or hourly rate employer in good faith believes it is willing to pay

# LAWS REQUIRING PAY DISCLOSURE

☐ Requiring disclosure in job postings and ads (cont'd.)

- **New York City** (cont'd.)

- “Salary” means the base wage or rate of pay
  - Does not include benefits or bonuses
- “Advertisement” is any written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants regardless of medium

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **New York City** (cont'd.)

- Actions may be brought by the New York Commission on Human Rights or current employees
- Civil penalties of up to \$250,000 for violation
  - First offense free of penalty if employer provides proof of fix within 30 days of receiving notice of violation
- Monetary damages to affected employees

# **LAWS REQUIRING PAY DISCLOSURE**

❑ Requiring disclosure in job postings and ads (cont'd.)

- **Washington** (January 1, 2023)

- Applies to employers with 15 or more employees
- Must disclose in posting for open position the wage scale or salary range, as well as a general description of all benefits and other compensation
  - “Posting” means any solicitation intended to recruit job applicants, including by third-parties
- For promotions or transfers, employer must provide wage scale or salary range “upon request” only

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- Washington (cont'd.)

- DRAFT administrative policy issued

- 15-employee threshold includes employees not in Washington (so long as employer has one employee in Washington)
  - Job postings relate to internal transfers as well as remote jobs
  - Wage range must include low and high number
    - If multiple levels, must include pay scale for each level

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- Washington (cont'd.)

- Remedies:

- Actual damages (how determined?)
    - Statutory damages equal to actual damages or \$5,000, whichever is greater
    - Civil penalties of \$500 for first violation, and \$1,000 or 10% of damages, whichever is greater, for repeat violations
    - Interest, costs, and attorneys' fees



# LAWS REQUIRING PAY DISCLOSURE

☐ Requiring disclosure in job postings and ads (cont'd.)

- **Westchester County, NY** (November 6, 2022)

- Applies to employers with four or more employees, employment agencies, and labor organizations in Westchester
- Also applies to positions required to be performed in whole or in part in Westchester County, including remote work

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure in job postings and ads (cont'd.)

- **Westchester County, NY** (cont'd.)

- Must include minimum and maximum salary for a position in any posting for a job, promotion, or transfer opportunity
  - Range based on employer's good faith belief at time of posting what it would pay
  - "Posting" defined as any written or printed communication that employer uses to recruit or accept applications for a particular position

# **LAWS REQUIRING PAY DISCLOSURE**

❑ Requiring disclosure in job postings and ads (cont'd.)

- **Westchester County, NY** (cont'd.)

- *Becomes null and void upon any statewide legislation taking effect*

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process

- **Connecticut** (October 1, 2021)

- Applies to any employer within the state as to any employee or applicant in Connecticut or working remotely out of state for a Connecticut office
- “Wage range” means the range of wages an employer anticipates relying on when setting wages. May include reference to any applicable pay scale, any previously determined range, the actual range for employees in comparable positions, or the budgeted amount for the position

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Connecticut** (cont'd.)

- For applicants:

- Must provide a wage range (including commission and non-discretionary bonuses) to applicant upon request or “prior to or at the time” an offer of employment is made, whichever is earlier

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- Connecticut (cont'd.)

- For employees:

- Provide wage range upon hire, change in position with the employer, or employee's first request for a wage range

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- Connecticut (cont'd.)

- Two-year SOL
- Compensatory damages, punitive damages, and attorneys' fees and costs recoverable
- State labor commissioner may recover civil penalties only

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Nevada** (October 1, 2021)

- Applies to any public or private employer in state and any employment agency
- Does NOT apply to work performed out of state
- For applicants:
  - Upon completion of an applicant interview, employer must provide the wage or salary range or rate for the position
    - No definition of “wage or salary range”



# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Nevada** (cont'd.)

- For employees:

- Upon application for a promotion or transfer, completion of an interview for such promotion or transfer, and a request from the employee, employer must provide the wage or salary range or rate for the promotion or transfer

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Nevada** (cont'd.)

- Remedies include:

- Compensatory damages
    - State agency may issue an administrative penalty of up to \$5,000 for each violation
    - Costs and attorneys' fees for suit or administrative investigation

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Rhode Island** (January 1, 2023)

- Applies to any employer in the state where all or greater part of work is performed in state
- For applicants: provide wage range upon request OR prior to discussing compensation
- For employees: upon time of hire, when employee moves into a new position, or upon request

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Rhode Island** (cont'd.)

- “Wage range” means range employer anticipates relying on in setting wages for the position
  - Can include reference to applicable pay scale, previously determined range, actual range, or budgeted amount
  - Regulations related to law notes the range should be “at least the minimum and maximum wages paid for the position”

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Rhode Island** (cont'd.)

- Two-year SOL from knowledge of violation (three years if violation was willful and wanton)
- Remedies include:
  - Compensatory damages
  - Special damages not to exceed \$10,000 based on size of business, good faith, gravity of violation, and history of previous violations
  - Reasonable attorneys' fees and costs

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure during application process (cont'd.)

- **Rhode Island** (cont'd.)

- Charge with state agency can result in civil penalties after 12/31/24:
  - 1<sup>st</sup> violation: up to \$1,000
  - Violation within five years of previous violation: up to \$2,500
  - Violation within seven years of two prior violations: up to \$5,000
- Penalties may be lowered upon evidence of employer self-evaluation

# LAWS REQUIRING PAY DISCLOSURE

## ❑ Requiring disclosure upon request

- **Cincinnati, OH** (March 2020)
  - Applies to any employer within the city of Cincinnati and employing 15 or more employees within Cincinnati, as well as those recruits job placement and referral agencies source
  - Must provide pay scale upon request from an applicant after receipt of a conditional offer of employment

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure upon request (cont'd.)

- Cincinnati, OH (cont'd.)

- Law does not apply to:

- Internal transfer or promotion opportunities
    - Potential rehires applying within five years of most recent terminated
    - CBA workforce



# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure upon request (cont'd.)

- Cincinnati, OH (cont'd.)

- Remedies:

- Two-year SOL
    - Compensatory damages
    - Costs and attorneys' fees

# LAWS REQUIRING PAY DISCLOSURE

## ❑ Requiring disclosure upon request (cont'd.)

- **Maryland** (October 2020)

- Any employer in the state must provide an applicant a wage range upon applicant's request
  - “Wage range” undefined in law
- SOL is three years from when employee receives last wages from employer
- Individual or Maryland Department of Labor and Industry may bring action for violation of law

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure upon request (cont'd.)

- Maryland (cont'd.)

- Civil penalties:

- 1<sup>st</sup> violation: letter requiring compliance
    - 2<sup>nd</sup> violation: civil penalty up to \$300 per applicant
    - Subsequent violations: civil penalty up to \$600 per applicant
    - Depends on gravity of violation, size of business, employer's good faith, and history of violations

# LAWS REQUIRING PAY DISCLOSURE

## ☐ Requiring disclosure upon request (cont'd.)

- **Toledo, OH** (June 2020)

- Applies to any employer located within city and employing 15 or more employees in Toledo
  - Job placement and referral agencies also liable
- Applies only to applicants for work performed within geographic boundaries of Toledo and for whom employer solicited, received, processed, or considered application, in whole or in part, in Toledo

# LAWS REQUIRING PAY DISCLOSURE

❑ Requiring disclosure upon request (cont'd.)

- Toledo, OH (cont'd.)

- Upon a conditional offer of employment and request by applicant, employer shall provide the pay scale for the position
- Exceptions:
  - Employees seeking transfer or promotion
  - Rehires within five years of applicant's most recent date of departure
  - Positions subject to a CBA

# LAWS REQUIRING PAY DISCLOSURE

☐ Requiring disclosure upon request (cont'd.)

- Toledo, OH (cont'd.)

- Remedies:

- Two-year SOL
    - Private cause of action for compensatory damages, costs of suit, and reasonable attorneys' fees

# LAWS COMING DOWN THE PIKE

## ❑ Albany County, NY (under consideration)

- Proposed bill would require employers to include the minimum and maximum salary or hourly wage range for any position being solicited for employment.
- Under review by Personnel and Law Committees of Albany County Legislature

# LAWS COMING DOWN THE PIKE

## ❑ New York state (awaiting Governor Hochul's signature)

- Would go into effect **270 days** after execution by Governor
  - Business leaders attempting to persuade Governor to send back for changes
- Employers with four or more employees would have to disclose: (a) the actual salary, (b) the minimum and maximum salary, OR (c) the hourly wage employer believes in good faith to be accurate



# LAWS COMING DOWN THE PIKE

## ❑ New York state (cont'd.)

- Would have to include such wage information in any advertised job, promotion, or transfer opportunity that CAN or will be performed, at least in part, within the state
- Aggrieved individuals may file complaint with state Department of Labor
- Civil penalties of up to \$1,000 for first violation, \$2,000 for second violation, and \$3,000 for third or subsequent violation

# LAWS COMING DOWN THE PIKE

## ❑ New York state (cont'd.)

- If signed, NY Department of Labor still needs to promulgate regulations regarding the law:
  - Do the employees have to be in New York for the four-employee jurisdictional requirement?
  - What is a “posting”?
  - Does compensation range include benefits or other compensation?
  - What jobs must an employer post?

## Q & A

