The push for pay equity has moved beyond prohibiting pay discrimination and into requiring employers encourage pay transparency for applicants and employees.
At the federal level, the National Labor Relations Act can protect discussions involving compensation as concerted activity. For federal contractors, OFCCP prohibits policies that discourage pay transparency. Many states have followed suit — and done even more.

Some states even require affirmative disclosure of pay ranges. For example, if an applicant asks (after an interview), employers in California must disclose the pay range for the position. Maryland, Rhode Island, and Washington also require employers to disclose the pay range to applicants upon request. Washington also requires that employers provide the salary range to employees who are changing roles, if they request it. And Rhode Island entitles employees to pay range disclosures upon hire, when changing jobs, and if they ask for it.

Nevada requires employers to provide the wage or salary range to applicants who have completed an interview—even without a request. But employees still must request the range to require transparency.

Connecticut now requires employers to provide the salary range to applicants (1) upon request and (2) by the time it extends an offer of compensation (if the applicant did not request it). It also requires disclosure to employees on hire, when changing roles, and when the employee requests it.

Perhaps Colorado has the most burdensome requirements. There, an employer with even one employee in Colorado that is recruiting for a job in Colorado (or that is remote) must include (1) the wage rate or range for the role, (2) a general description of other compensation available for the role, and (3) a general description of benefits for the role in the job posting.

Setting a new mark, Colorado also requires “opportunity transparency.” Employers with at least one Colorado employee must also provide written notice to its Colorado employees of any “promotional opportunity” — including any hire, change in job title, or material change in job duties, opportunities, or responsibilities — before it decides who will get that new job. It includes in-line promotions. Even employees who are not qualified for the job must receive notice of the opportunity. And if the role is in Colorado or is remote the notice must include the same pay and benefits disclosures that job postings require.

Since Colorado began enforcing its novel transparency requirements, employers have been struggling with how to comply. Should Colorado’s “outlier” law drive changes to company-wide practices? Is Colorado even an outlier, or will others follow suit?

So far, the answer appears to be “yes” and “no.” Maryland, Nevada, Connecticut, and Rhode Island enacted their pay transparency requirements after Colorado. They require pay disclosures, but do not mirror the Colorado approach.

But bills under consideration in Massachusetts (H 1950 / S 1208) would require employers to provide the pay scale for a particular employment position to an applicant (after interview) or an employee (currently employed in that position), upon request. The bills include nothing on “opportunity transparency.”
And in New York, bills (S 5598A/A 6529A) would require employers to disclose the compensation range, job description (if it exists), and a general description of other compensation and benefits for the role “upon issuing an employment opportunity for internal or public viewing.” This seems to require pay and benefits disclosures in job postings — like Colorado. But unlike Colorado, the New York bills do not propose an “opportunity transparency” requirement.

Synthesizing the varied approaches among the states, the trend seems to require pay disclosures. At a minimum, new laws require disclosure upon request. But there may be an emerging trend toward proactive disclosure to applicants and employees —see Colorado and New York. “Opportunity transparency,” however, seems to be farther than most states are currently prepared to go.

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National Law Review, Volume XI, Number 223

Source URL: https://www.natlawreview.com/article/emerging-trend-state-pay-transparency-laws