



Employment Law Note

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Washington Employers Face Increased Pay Transparency Requirements



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As a friendly reminder, Washington's Pay Transparency Law went into effect on January 1, 2023. Employers now must disclose in each job posting: (1) the wage scale or salary range for the position; and (2) a general description of all benefits and other compensation to be offered. The law also requires employers to provide existing employees who are promoted or offered a new position with the wage scale or salary range of the new position, upon request.

Washington's Pay Transparency Law amends Washington's Equal Pay and Opportunity Act (RCW 49.58) and follows a growing trend in U.S. laws toward wage transparency. New York, California and Colorado have already passed similar legislation. Washington's enactment, however, is arguably more expansive in both its scope and breadth. The intent behind this legislation is to promote fairness among workers and address business practices that contribute to inequality.

Does Washington's Pay Transparency Law apply to all Washington employers?

No. This requirement only applies to companies with 15 or more employees. This threshold requirement, however, includes employees that do not have a physical presence in Washington if the employer has one or more Washington-based employees. For this reason, Washington employers with out-of-state employees must include those employees in their calculation to determine whether the pay transparency requirements apply.

In addition, the disclosures must occur in postings for remote work that *could* be performed by a Washington-based employee. Employers cannot avoid these requirements by stating in the posting that they will not accept Washington applicants. The pay transparency requirements, however, do not apply to jobs that will be performed entirely outside Washington or to printed hard-copy posts made and distributed entirely outside Washington.

What is a "job posting"?

A "job posting" means any solicitation intended to recruit job applicants for a specific available position. This broad definition includes recruitment performed either directly by an employer or indirectly through a third party as well as both electronic and printed postings.

Job postings must include wage and salary information when the posting includes qualifications (*i.e.*, specific knowledge, skills or abilities) for desired applicants for a specific position. As such, a window sign that reads "Help Wanted" would not be considered a job posting because it neither includes qualifications nor references a specific position. Similarly, an online posting stating "Manufacturing jobs available. Apply now online" would not be considered a job posting.

For electronic job postings that are considered "job postings" subject to the pay transparency requirements, employers may choose to utilize a link or hyperlink to a more detailed description. If the benefits and other compensation information is available on the original or subsequent web pages, then the information needs to only be listed once.

What about internal transfers or promotions?

Internal transfers and promotions also fall under this requirement. Employers must provide an employee who is offered an internal transfer or promotion with the wage scale or salary range of their new position, upon request.

How does an employer properly describe a wage scale or salary range?

The opening wage scale or salary range should be the most reasonable and generally expected range of compensation, extended from the lowest to the highest pay established by the employer prior to publishing the job posting. If there is no existing wage scale or salary range, one should be created prior to publishing the job posting. Open-ended phases—such as “up to” or “and up”—are not allowed. For example, “\$60,000/per year and up” (with no top of the range), or “up to \$29.00/hour” (with no bottom of the scale) are not permissible. By contrast, the following allowable posting demonstrates how a position could be filled with varying job titles depending on experience:

- Accounting Analyst 1: \$27.00-\$29.00 per hour
- Accounting Analyst 2: \$65,000-\$80,000 per year
- Accounting Analyst 3: \$80,000-\$110,000 per year

Similar specificity is required for commission and piece-rate employment. Also, if an employer intends to implement a “starting range” or “starting rate” for an initial timeframe of employment or probationary period, the starting range or rate may be listed on the

posting, but the entire scale or range must also be listed on the job posting.

What about benefits and other compensation?

The posting must also include a general description of all benefits and other compensation. A “general description of all benefits” includes, but is not limited to, health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, 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. A general description of all benefits should provide the applicant with the employer’s most reasonable and genuinely expected benefits offered for the specific available position. If the general description of benefits changes after a posting has been published, an employer should update the posting to reflect the updated benefit information.

What happens if an employer fails to comply?

All applicants, including existing employees, who apply to a posting recruiting Washington-based employees that fails to satisfy the pay transparency requirements may file a complaint with the Washington State Department of Labor and Industries (L&I) or file suit in court. Costs to the employer can include payment of the claimant’s attorney’s fees.

As Always...

If you have questions or would like to discuss issues related to Washington’s Pay Transparency Law to ensure compliance, please do not hesitate to reach out to our office.

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