What Employers Need to Know About the Evolving Trend of Pay Transparency Legislation

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The start of a new year brings many things, such as new year's resolutions, job changes, and for many states...new laws. The start of 2022 has focused heavily on Pay Transparency Legislation, with the United States' largest city requiring employers to post a salary range of any job posting beginning in May 2022. At least eight other states and several cities already have pay transparency laws on the books.

Much of the existing legislation surrounding pay transparency already in effect is weaker than the one that will take effect in New York City. New York City requires employers who have four or more employees (including independent contractors) to post a salary range for any job posting. Many of the other pay transparency laws already in effect only require disclosure of a salary range if asked by an applicant, or upon offer of employment. Colorado is currently the only other state who requires a salary range to be posted within the job posting.

Where	Transparency Requirement
California	Upon Candidate Request
Colorado	In Job Posting
Connecticut	Upon Candidate Request or At Hire – Whichever is Sooner
Maryland	Upon Candidate Request
Nevada	After first interview
New York City	In Job Posting
Cincinnati, Ohio	
Toldeo, Ohio	Upon Request After Conditional Offer of Employment is Made
Rhode Island	Upon Candidate Request or When Inquiring About Candidate's Salary Expectations or When Offer is Made – Whichever is Sooner
Washington	Upon Candidate Request

This ripple is moving across the country with states like Massachusetts, Virginia, New York State, South Carolina, Washington, and most recently California considering pay transparency laws However, as organizations are increasingly hiring remote employees across the country, it is important that you consider following legislation for where you are posting roles not just where you have physical locations.

Nonetheless, the United States has a long way to go to catch up to the rest of the world when it comes to enacting pay transparency legislation. Many countries in Europe have reporting regimes that require employers to publish pay gap data, the European Union ("EU") is set to introduce further pay transparency laws this year, which will be enforced overtime to all its member countries. While the EU's pay transparency proposal is quite in depth, it also proposes that employers post salary ranges in future job postings.

The sad reality in 2022 is that men are still likely to be paid more than women, and the race pay gaps are thought to be even wider. By requiring a pay range in a job posting means that an employer must determine the value of a role-based on external market data and internal equity. Previously, many employers would ask the current salary of a candidate to construct an offer. However, by using current salary as a benchmark the pay gaps between genders and ethnicities continue to persist from workplace to workplace.

When companies are forced to be transparent about their salaries, the candidate has confidence to speak openly about their expectations of pay. The burden is moving to the employer to determine the pay range, rather than the employee to initially voice an expectation.

As an employer, what does this mean for you in the future of job postings and recruiting and what steps should you take?

These pay transparency laws may mean that you need to spend some time evaluating and standardizing your pay practices and philosophies. Why? Because when you are required to post salary ranges in job postings, current employees can see those salary ranges. If you post a salary range for an advertised role that is much higher than a current employee makes in the same role, that will likely cause a decline in employee morale, and it could cause your current high performers to seek employment elsewhere. It is also worth considering if you are a multi-jurisdictional employer the impact of only sharing ranges in locations where laws apply and how that might feel culturally, or whether adopting this as best practice across the board is a more inclusive .

Additionally, it is no secret that with the continuation of the "Great Resignation," this is a candidate's market. Posted salary ranges should be competitive to attract top talent so they choose to come work for your company and not a competitor. No company wants to post a job announcement with a salary range that is not competitive in this market.

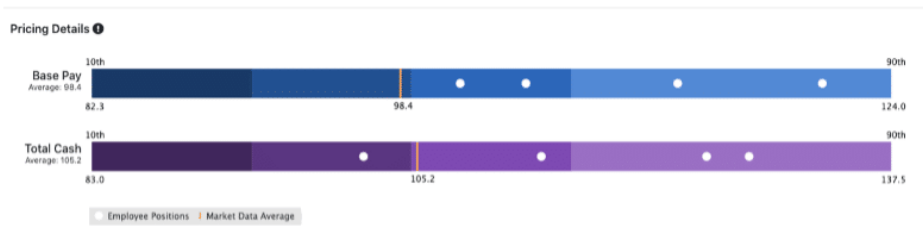
Here are our recommended steps to help you prepare:

Step 1: Find an external market data source & benchmark your roles against this data

The best place to start is by finding a market data source that relates to your talent market and benchmarking your jobs against this data. Most survey providers have a matching guide to help you to do this. Remember, there may be some employees with different job titles doing similar work. It is important to review job descriptions for accuracy and/or talk to employees in their current role to make sure you are accurately benchmarking based on the work they are doing.

Step 2: Create a pay range

Once you have matched your jobs you need to look at the current incumbents of those jobs against the market data and against each other. You can use this market data, and internal incumbent range, to determine a pay range to publish.

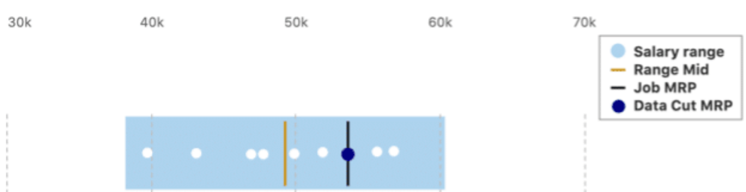


It is possible to stop there but you will run into the issue of having a lot of data to deal with, depending on the number of your jobs, and it is likely that your current employees do not have the data you have, so will not be able to work out how the job advertised is related to theirs. This may result in demotivation and lots of pay queries. The next step in the fair pay journey is to create pay structures and provide that information to your employees.

Step 3: Create pay structures

To do this you combine all the roles that are in a similar job family and level and use the market data to create pay structures. This reduces the amount of data you are dealing with and brings together substantially similar roles into structures. You can have structures that are by location as well, if you have a policy of paying employees differently depending on where they, or the office is located. When you have formalized your structures, you can see all the employees within each structure and where they fit. At this point you are also ready to complete a successful pay equity analysis.

When placing a job advertisement, all that is necessary is to check the market data of the job and determine where in the structure you see it fitting. You can either post the whole structure range or a smaller range around the expected amount. The latter is better for managing the expectations of the prospective employee.



Step 4: Communicating pay ranges with employees

Top performing organizations will proactively communicate with employees what their current pay range is and where within that pay range they currently are. This will give employees an understanding of how pay decisions are made and how they can interpret new job postings they may see with the pay range listed.

Some companies only share the structure that the employee is in, while others share the whole organizational structure. The latter enables employees to understand how pay is determined within the company and how to progress, either with sideways moves to other job families or up a career path within their own structure.

How you communicate pay and your pay transparency strategy is about you having confidence in the way you pay your employees, and them having confidence and trust in you.

Step 5: Sustainable fair pay

There is another impact of these pay transparency laws on how you manage compensation. You will need to ensure that the structures that you have set up and communicated are sustainable going forward and that appropriate governance is in place so that consistent compensation decisions are made. For example, what happens if someone hires or promotes someone outside of an agreed range for the job? Ensuring consistency throughout your compensation cycle, from hiring decisions, merit reviews, promotions and ad hoc adjustments will ensure that when you disclose pay ranges you remain competitive and keep employee morale high.