

### Pay Equity Disputes May Be the 'Sleeping Giant' of Wage Transparency Laws, Employment Lawyers Predict

By Colleen Murphy

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**A**s wage transparency laws are being enacted in a patchwork fashion across the country, legal experts are weighing in on how employers can best protect themselves in a shifting landscape of legislation designed to prevent pay discrimination.

Wage transparency laws have now been passed in 10 states, such as Washington, Nevada and Rhode Island, while a dozen more, including New Jersey, Massachusetts and Virginia, might be considering legislation requiring the disclosure of a position's pay. Several cities have also taken the initiative to enact their own laws.

While Ohio has not passed a statewide law, Cincinnati and Toledo have each passed ordinances for equal pay.

The laws may differ slightly from state to state—or city by city—but generally, they apply to employers with anywhere from one to 50 employees and require employers to disclose wage rates and salary ranges to internal employees and external job-seekers.



(Credit: Simon / AdobeStock)

Wage transparency laws are often piggy-backed on existing pay equity laws, according to Alexandra Garrison Barnett, a partner with Alston & Bird in Atlanta, who specializes in labor and employment issues.

Barnett told Law.com that more states and local jurisdictions are jumping on the wage transparency bandwagon in the past few years in an attempt to combat pay disparity in employee wages.

Wage transparency laws are typically taking one of two forms.

“There are laws that prohibit employers from making inquiries about employees past

salaries,” Barnett said. “And the other thing that we are seeing are laws that require employers to post the amount of salary, wages, bonuses and other benefits.”

Barnett said that, since wage transparency laws differ so much from state to state, employers who operate in multiple jurisdictions need to think about compliance and review the new laws carefully to evaluate their obligations.

Violations of wage transparency laws could bring fines of up to \$10,000 per violation in states like California, Colorado or Illinois. In New York, fines could be upward of \$1,000 per violation, while an employee or job applicant can seek compensatory and punitive damages in Connecticut for noncompliance.

Christopher T. Wall, a partner and trial attorney with Stoel Rives in Seattle, told Law.com that attorneys might not be aware of the potential risks for their clients from both wage transparency and the pay equity statutes. Wall, who focuses on wage and hour disputes and traditional labor issues, said his firm defends both pay equity and pay transparency litigation and advises companies on compliance with legal requirements.

“There were pay equity statutes before there were pay transparency requirements which, I think, are sleeping giants,” Wall said. “There is a ton of exposure that people, both on the plaintiff side and on the employer side, are not totally tuned in to. It is good to take stock of pay discrepancies that may exist and to fix those issues. That also helps protect your business from catastrophic liability.”

The National Bureau of Economic Research in Cambridge, Massachusetts, examined public sector disclosure laws on university faculty salaries in Canada and found evidence that transparency laws reduced the gender pay gap between men and women by approximately 20 to 40%. Pay transparency laws could help workers advocate for pay increases based on the newly available information, according to the Institute for Women’s Policy Research.

Melinda Koster, a partner in the New York office of Sanford Heisler Sharp and co-chair of the firm’s discrimination and harassment practice group, told Law.com that she expects that new wage transparency laws will put employees in a position so they are better able to uncover those pay disparities and will then be better able to advocate for their rights.

“I think there is a real question as to how these laws are going to culminate in legal action,” Koster said. “We are already seeing agency enforcement actions.”

However, Koster said she believes it is likely that wage transparency violations are likely to be cited as additional fodder in lawsuits over equal pay litigation rather than causes of stand-alone action. She said that she expects the new wage transparency laws to be helpful, since they will spur companies to do more documentation and to engage in examination of their pay practices.

“These laws require a lot of action by companies from a compliance perspective because they have to think about how they can comply with a variety of jurisdictions,” Koster said.

“There are question marks, for example, with remote employees.”

Koster used the example of a remote job listing formed in one particular state or jurisdiction for a position that could be performed in a number of other locations. She said it remains to be seen, for example, if the requirement would be for a company’s job listing to comply with the laws of each jurisdiction.

“Many of these states essentially apply their law to advertisements for employment that are made in their state,” said David A. Rapuano, a partner with Archer & Greiner in New Jersey. “Most companies advertise on generalized sources that cross state boundaries.”

Rapuano, who has practiced in all areas of labor and employment law, said the biggest complexity he sees with wage transparency laws is the sheer number of cities and states with such legislation on their books and the nuances of each law in each jurisdiction. Rapuano noted that it is not that the laws are bad but it adds additional layers to have so many laws apply to the same organization.

Amanda E. Brown, a partner with Reed Smith in Texas, represents employers in litigation, arbitration and administrative agency actions concerning both federal and state labor and employment laws, according to her firm bio. In a conversation with Law.com, she said

remote workers pose a particular concern for employers in light of the new laws.

“Some of these jurisdictions have come up with helpful FAQs and guidance, and some just have not,” Brown said. “And so it is just going back to basics and looking up the statute and trying the best we can based on the language to understand how it is going to apply to your workforce.”

Brown said that litigation on wage transparency has not materialized yet, but it may happen since some states and cities do have a private right of action.

“We have seen a little bit of rumblings from government enforcement,” Brown said. “New York recently came out and said some of these salary ranges you are posting are just not real ranges and it is not in good faith.”

Brown predicted that wage transparency will continue to spread across the country but that she does not expect it to expand to all 50 states. She noted that states that consider themselves more business friendly will be hesitant to impose this kind of burden on employers.

“I think all of this is indicative of a real desire by employees to know where they land on pay, which has been packaged into legislation to help that,” Brown said. “It is something that is not going away soon, and employers really have to make sure they have their ducks in a row on pay.”