

PAY TRANSPARENCY

WHITE PAPER

MAY 2023



DISCLAIMER: The laws outlined in this document are subject to change over time. Please review and confirm the most recent guidance.



Summary

Pay Transparency Laws

In general, pay transparency laws require that employers disclose wage and/or benefits information to applicants and/or employees at specified moments in the hiring process. The overall purpose behind all the pay transparency laws is an honorable one; By making pay information evident, the laws arguably create situations where every prospective employee and/or current employee gets a fair opportunity to be equally compensated, thus reducing the wage disparities that exist between genders and races.

What Employers Need to Know

Although the purpose behind the pay transparency laws is generally the same, each pay transparency law tends to differ in relation to the following matters:

Which employers are covered under the law?

- Each law identifies the types of employers that must abide by the law's obligations. These distinctions are of great importance due to the increase in the employment of remote workers. This is because employers with a single remote worker in a jurisdiction with a pay transparency law may meet the requirements of a covered employer even though the employer is not located within that jurisdiction.

When are the pay disclosures required?

- Each law varies on when pay disclosures are required. Some laws mandate pay disclosures in job postings, while others require it upon request by an applicant and/or employee, or at certain stages of the hiring process and/or employment.

What types of compensation information must be disclosed?

- For the most part, the laws primarily require a pay scale to be provided to applicants and/or employees. Still, there are laws that mandate disclosure of benefits and other compensation, as well as job descriptions.

What are the potential penalties for violations?

- The laws differ on the potential consequences of non-compliance. Many jurisdictions allow the Government to levy penalties on employers who fail to comply. Additionally, some jurisdictions give aggrieved individuals the right to bring a lawsuit against employers for a violation.





Jurisdictions that have passed pay transparency laws

Within this paper you will find brief summaries of jurisdictions that have passed pay transparency laws which mandate pay disclosures in some capacity. Please note, this information is not intended to be all inclusive and is only meant to recap some of the laws' requirements so that you can use this information to have further discussions internally and with your legal counsel about your responsibilities under the laws. Additionally, the information provided here is intended to provide some insight into the types of requirements that may be forthcoming as more jurisdictions across the country pass pay transparency laws.

Jurisdictions include:

- [California](#)
- [Colorado](#)
- [Connecticut](#)
- [Maryland](#)
- [Nevada](#)
- [New Jersey \(Jersey City\)](#)
- [New York \(Ithaca City, New York City, New York, Westchester County\)](#)
- [Ohio \(Cincinnati, Toledo\)](#)
- [Rhode Island](#)
- [Washington](#)

California (CA Labor Code § 432.3)

Covered Employers	Whether a particular employer is covered under the law is dependent on the type of pay disclosure requirement that is mandated.
Pay Disclosures in Job Postings	Employers with 15 or more employees, with at least one of the employees currently located in California, must include the salary or hourly wage range that the employer reasonably expects to pay for the position in any job posting. If the position's hourly or salary wage is based on a piece rate or commission, then the piece rate or commission range the employer reasonably expects to pay for the position must be included in the job posting. The salary or hourly wage range must be included within the job posting if the position may ever be filled in California, either in-person or remotely. Furthermore, employers cannot link to the salary or hourly wage range in an electronic posting or include a QR code in a paper posting that will take an applicant to salary or hourly wage range information. The salary or hourly wage range must be included within the posting.
Pay Disclosures to Applicants	All employers with at least one employee currently located in California, upon reasonable request, must provide the salary or hourly wage range that the employer reasonably expects to pay for the position to an applicant applying for employment.
Pay Disclosures to Employees	All employers with at least one employee currently located in California, upon request, must provide an employee the salary or hourly wage range that the employer reasonably expects to pay for the position in which the employee is currently employed.
Additional Requirements	Employers must maintain records of a job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment.
Consequences of Non-Compliance	<ul style="list-style-type: none"> • Upon finding that an employer has committed a violation, the Labor Commissioner may order the employer to pay a civil penalty of no less than one hundred dollars (\$100) and no more than ten thousand dollars (\$10,000) per violation. For a first violation, no penalty shall be assessed upon demonstration by the employer that all job postings for open positions have been updated to include the pay scale. • A person who claims to be aggrieved by a violation may also bring a civil action for injunctive relief and any other relief that the court deems appropriate.
Guidance	Please see California Division of Labor Standards Enforcement's California Equal Pay Act: Frequently Asked Questions .

Colorado (C.R.S. § 8-5-201)

<p>Covered Employers</p>	<p>The pay disclosure requirement applies to all employers that employ at least one person in Colorado, and all employees of those employers. If an employer has no employees in Colorado at the time of its hiring, then it is not covered for that hiring decision, even if it considers Colorado applicants, or ultimately hires someone who would work in Colorado.</p>
<p>Pay Disclosures in Job Postings</p>	<p>Employers must disclose in each posting for each job opening the hourly or salary compensation, or a range of the hourly or salary compensation, and a general description of all of the benefits and other compensation to be offered to the hired applicant. The benefits that must be generally described include health care, retirement benefits, paid days off, and any tax-reportable benefits, but not minor “perks” like use of an on-site gym or employee discounts. Remote work performable in Colorado or elsewhere for a covered employer must comply with the pay disclosure requirement, even if the job posting states that the employer will not accept Colorado applicants. However, the disclosure requirements do not apply to jobs to be performed entirely outside Colorado.</p>
<p>Additional Requirements</p>	<ul style="list-style-type: none"> • Employers must keep records of job descriptions and wage rate history for each employee for the duration of the employment plus two years after the end of employment. • Employers are required to 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.
<p>Consequences of Non-Compliance</p>	<p>Upon finding that an employer has committed a violation, the Director of the Division of Labor Standards and Statistics may order the employer to pay a fine of no less than \$500 and no more than \$10,000 per violation.</p>
<p>Guidance</p>	<p>Please see Colorado Department of Labor and Employment’s Interpretive Notice & Formal Opinion (“INFO”) # 9</p>

Connecticut (C.G.S.A. § 31-40z)

Covered Employers	The pay disclosure requirements apply to any employer within Connecticut using the services of one or more employees for pay, even if such employees are located outside the physical confines of Connecticut. The pay disclosure requirements do not apply to any out-of-state “national” employer which is not located within Connecticut. However, the pay disclosure requirement does apply to any subsidiary of the “national” employer which is located within the physical confines of Connecticut and hiring employees.
Pay Disclosures to Applicants	Employers must provide an applicant for employment with the wage range for a position for which the applicant is applying, upon the earliest of (i) the applicant’s request, or (ii) prior to or at the time the applicant is made an offer of compensation.
Pay Disclosures to Employees	Employers must provide an employee with the wage range for the employee’s position upon (i) the hiring of the employee, (ii) a change in the employee’s position with the employer, or (iii) the employee’s first request for a wage range.
Consequences of Non-Compliance	An action to redress a violation may be maintained in any court of competent jurisdiction by any one or more employees or prospective employees. An employer who violates the law may be found liable for compensatory damages, attorney’s fees and costs, punitive damages and such legal and equitable relief as the court deems just and proper.
Guidance	Please see the Connecticut Department of Labor’s Questions and Answers Regarding Public Act 21-30 .

Maryland (Md. Code Ann., Lab. & Empl. § 3-304.2(A))

Covered Employers	The pay disclosure requirement applies to a person engaged in a business, industry, profession, trade, or other enterprise in Maryland.
Pay Disclosures to Applicants	On request, an employer must provide to an applicant for employment the wage range for the position for which the applicant applied.
Consequences of Non-Compliance	If the Maryland Department of Labor's Commissioner of the Division of Labor and Industry determines that an employer has committed a violation, the Commissioner may, in the Commissioner's discretion, (i) for a first violation, issue a letter to the employer compelling compliance, (ii) for a second violation, assess a civil penalty of up to \$300 for each applicant for employment for whom the employer is not in compliance; or (iii) for each subsequent violation, assess a civil penalty of up to \$600 for each applicant for employment for whom the employer is not in compliance if the violation occurred within three years after a previous determination that a violation had occurred.

Nevada (NRS § 613.133)

Covered Employers	The pay disclosure requirements apply to a public or private employer in Nevada.
Pay Disclosures to Applicants	Employers must provide an applicant for employment who has completed an interview for a position, the wage or salary range or rate for the position.
Pay Disclosures to Employees	Employers must provide the wage or salary range or rate for a promotion or transfer to a new position if an employee has (i) applied for the promotion or transfer; (ii) completed an interview for the promotion or transfer or been offered the promotion or transfer; and (iii) requested the wage or salary range or rate for the promotion or transfer.
Consequences of Non-Compliance	In addition to any other remedy or penalty, the Nevada Labor Commissioner may impose against any employer that is found to have committed a violation an administrative penalty of not more than \$5,000 for each such violation. If an administrative penalty is imposed, the costs of the proceeding, including, without limitation, investigative costs, and attorney's fees, may be recovered by the Labor Commissioner.

New Jersey - Jersey City (Jersey City Municipal Code § 148-4.1)

Covered Employers	The pay disclosure requirement applies to employers within Jersey City with five or more employees in their employ within Jersey City. Persons working as independent contractors in furtherance of the employer's business are counted as employees.
Pay Disclosures in Job Postings	Employers must post a minimum and maximum annual salary or hourly wage whenever the employer advertises by any means to provide notice of employment opportunities, transfers, or promotions. The law does not explicitly address whether the pay disclosure requirement applies to job postings for remote positions outside of Jersey City.
Consequences of Non-Compliance	Any violations may be reported to the City's Office of Code Compliance (OCC) or to the Women's Advisory Board for referral to the OCC for possible prosecution under Jersey City Municipal Code § 1-25. The maximum fine for a violation shall be, at the discretion of the Court, a fine of up to \$2,000.

New York - Ithaca City (Ithaca City Code § 215-3(F))

Covered Employers	The pay disclosure requirement applies to employers with four or more employees whose standard work locations are in Ithaca City.
Pay Disclosures in Job Postings	Employers must state the minimum and maximum hourly or salary compensation whenever the employer advertises an opportunity for employment as an employee, including a job, promotion, or transfer opportunity. The law does not explicitly address whether the disclosure requirement applies to job postings for remote positions outside of Ithaca City.
Consequences of Non-Compliance	Any individual or group aggrieved and alleging unlawful discrimination may have a cause of action against the violator for money damages and any other remedy available at law.

New York - New York City (N.Y. Code § 8-107)

Covered Employers	The pay disclosure requirement applies to employers with four or more employees. The four employees do not need to work in the same location, and they do not need to all work in New York City. As long as one of the employees works in New York City, the workplace is covered.
Pay Disclosures in Job Postings	Employers must state the minimum and maximum annual salary or hourly wage whenever they advertise a job, promotion, or transfer opportunity. The pay disclosure requirement applies when advertising for positions that can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee's home.
Consequences of Non-Compliance	<ul style="list-style-type: none">• New York City's Commission on Human Rights can enforce civil penalties. For a first violation, it is a civil penalty of \$0, if such employer proves within 30 days that the violation has been cured. However, employers may pay civil penalties of up to \$250,000 for an uncured first violation of the law, as well as for any subsequent violations.• An employee may bring an action against their current employer for an alleged violation in relation to an advertisement by their employer for a job, promotion, or transfer opportunity with such employer.
Guidance	Please see New York City Commission on Human Rights' Salary Transparency in Job Advertisements .

New York (NY Labor Law §194-b)

Effective Date: September 17, 2023

Covered Employers	The pay disclosure requirement applies to any person, corporation, limited liability company, association, labor organization or entity employing four or more employees in any occupation, industry, trade, business or service, or any agent thereof. It is not clear whether all four employees must reside in New York or just a portion thereof.
Pay Disclosures in Job Postings	Employers must disclose the minimum and maximum annual salary or hourly range of compensation that the employer in good faith believes to be accurate and a job description, if such description exists, in advertisements for a job, promotion, or transfer opportunity. Advertisements for jobs, promotions, or transfer opportunities paid solely on commission must disclose a general statement that compensation shall be based on commission. The pay disclosure requirement applies to the advertisement of a job, promotion, or transfer opportunity that will be performed, at least in part, in the New York, including a job, promotion, or transfer opportunity that will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York.
Consequences of Non-Compliance	An employer who fails to comply with any requirement shall be deemed in violation and shall be subject to a civil penalty in accordance with NY Labor Law §218.

New York - Westchester County (Westchester County Laws § 700.03)

Covered Employers	The pay disclosure requirement applies to employers with four or more employees. It is not clear whether all four employees must reside in Westchester County, or just a portion thereof.
Pay Disclosures in Job Postings	Employers must state the minimum and maximum salary whenever the employer posts a job, promotion, or transfer opportunity. The pay disclosure requirement only applies to posts for positions that are required to be performed, in whole or in part, in Westchester County, whether from an office, in the field, or remotely.
Consequences of Non-Compliance	Violations of this amendment are subject to the remedies and penalties provided in Section 700.11(h) of the Westchester County Human Rights Law.

Ohio - Cincinnati (Cincinnati Municipal Code § 804-03)

Covered Employers	The pay disclosure requirement applies to employers located within the Cincinnati and using the services of 15 or more employees for pay within Cincinnati.
Pay Disclosures to Applicants	An employer, upon reasonable request, must provide the pay scale for a position to an applicant applying for employment, for which the applicant has been provided a conditional offer of employment by the employer.
Consequences of Non-Compliance	If an employer fails to comply, the applicant has a private cause of action against the employer for compensatory damages, reasonable attorney's fees, the costs of the action, and such legal and equitable relief as the court deems just and proper.

Ohio - Toledo (Toledo Municipal Code § 768.02(c))

Covered Employers	The pay disclosure requirement applies to any individual, corporation, limited liability company, firm, partnership, labor organization, voluntary association, joint stock association, and any public corporation, or an agent thereof, located within the Toledo and using the services of 15 or more employees for pay within the Toledo.
Pay Disclosures to Applicants	An employer, upon reasonable request, must provide the pay scale for a position to an applicant applying for employment, for which the applicant has been provided a conditional offer of employment by the employer.
Consequences of Non-Compliance	The applicant has a private cause of action against the employer for compensatory damages, reasonable attorney's fees, the costs of the action, and such legal and equitable relief as the court deems just and proper.

Rhode Island (R.I. Gen. Laws § 28-6-22(c))

Covered Employers	The pay disclosure requirements apply to any individual, firm, partnership, association, joint stock company, trust, corporation, receiver, or other like officer appointed by a court of Rhode Island, and any agent or officer of any of the previously mentioned classes, employing any person in Rhode Island.
Pay Disclosures to Applicants	Upon the applicant's request, an employer must provide an applicant for employment with the wage range for the position for which the applicant is applying. The employer should provide a wage range for the position the applicant is applying for prior to discussing compensation.
Pay Disclosures to Employees	An employer must provide an employee with the wage range for the employee's position both at the time of hire and when the employee moves into a new position. Additionally, during the course of employment, upon an employee's request, an employer must provide the wage range for the employee's position.
Consequences of Non-Compliance	An applicant for employment, an employee, or a former employee aggrieved by a violation may file a complaint with the director of labor and training or may file a civil action in any court of competent jurisdiction to obtain relief.

Washington (Wash. Rev. Code § 49.58.110)

<p>Covered Employers</p>	<p>The pay disclosure requirements apply to employers with 15 or more employees engaging in any business, industry, profession, or activity in Washington. The 15 or more employee threshold includes employees that do not have a physical presence in Washington, if the employer has one or more Washington-based employees. “Engaging in any business, industry, profession, or activity in Washington” includes employers that do not have a physical presence in Washington but engage in business in Washington or recruit for jobs that could be filled by a Washington-based employee.</p>
<p>Pay Disclosures in Job Postings</p>	<p>Employers must disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. 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. “Other compensation” includes, but is not limited to, bonuses, commissions, profit-sharing, stock options, or other forms of compensation that would be offered to the hired applicant in addition to their established salary range or wage scale. Employers must disclose wage and salary information in postings for remote work that could be performed by a Washington-based employee and an employer cannot avoid disclosing wage and salary information requirements by indicating within a posting that the employer will not accept Washington applicants. However, employers do not need to disclose wage and salary information for jobs to be performed entirely outside Washington even if the job posting reaches Washington-based applicants.</p>
<p>Pay Disclosures to Employees</p>	<p>Employers must, upon request of an employee offered an internal transfer to a new position or promotion, provide the wage scale or salary range for the employee’s new position.</p>
<p>Consequences of Non-Compliance</p>	<ul style="list-style-type: none"> • The Director of the Department of Labor and Industries may order the employer to pay to the complainant actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; interest of one percent per month on all compensation owed; payment to the department of the costs of investigation and enforcement; and any other appropriate relief. Additionally, the Director may order payment of a civil penalty. For a first violation, a civil penalty may not exceed \$500. For a repeat violation, the civil penalty may not exceed \$1,000 dollars or ten percent of the damages, whichever is greater. • An employee may bring a civil action against an employer for violation for actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; interest of one percent per month on all compensation owed; and costs and reasonable attorneys’ fees.
<p>Guidance</p>	<p>Please see Washington State’s Department of Labor and Industries’ ES.E.1.</p>

About The Author

Jonathan Culbertson received his Juris Doctorate from the University of Cincinnati College of Law in 2016 and was admitted to the State of Pennsylvania Bar in 2018. Jonathan joined InCheck in 2021 as Compliance Manager and promptly became a member of the Professional Background Screening Association.

As Compliance Manager, Jonathan helps the InCheck team and clients stay up to date with the continuously changing federal, state, and local laws and regulations that influence how background screenings should be conducted, so that all parties can develop policies and procedures that are compliant. Jonathan takes great pride in helping the team and clients better understand the requirements of laws such as the federal Fair Credit Reporting Act, fair credit reporting state laws, equal employment opportunity laws, fair chance hiring laws, pay equity laws, marijuana laws, and many other state and local law trends. These laws are continuously evolving, complex, and mandate many requirements. As such, he is passionate about sharing his knowledge of new and changing legislation, compliance issues, and industry best practices through newsletters, blogs, vlogs, and white papers.



InCheck
7500 West State Street, Suite 200
Wauwatosa, WI 53213
www.inchecksolutions.com
hello@inchecksolutions.com



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