

Pay Transparency Laws:

Adapting to the New World

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Littler[®]

ACC Association of
Corporate Counsel



presented by



Asha Santos

Office Managing Shareholder

Boston

ASantos@littler.com

(617) 378-6092



Francis Bingham

Shareholder

Boston

FBingham@littler.com

(617) 378-6075



Agenda

- Overview of Pay Transparency
 - United States Requirements
 - International Perspective
- Litigation and enforcement efforts
- Applying the principles
- Compliance

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Who's sharing their salary information with coworkers or professional contacts:

42% of Gen Z workers (ages 18-25)

40% of Millennials (ages 26-41)

31% of Gen Xers (ages 42-57)

19% of Baby Boomers (ages 58-76)

Source: Bankrate Survey (March 2022)

Trends



Aon's October 2022 Pay Disclosure Pulse Survey

44% of companies plan to disclose pay ranges only when required

31% of companies plan to disclose salaries nationwide regardless of laws



August 2023 Indeed article claims pay transparency now in a majority of U.S. job postings



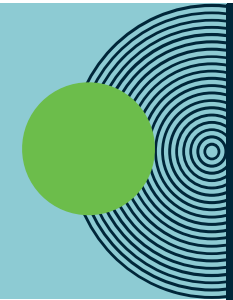
Legislation Trends

Disclosure in postings, as opposed to during hiring process

States with existing pay transparency laws passing amendments

More laws passed each year!

Where it Started: Salary History Restrictions



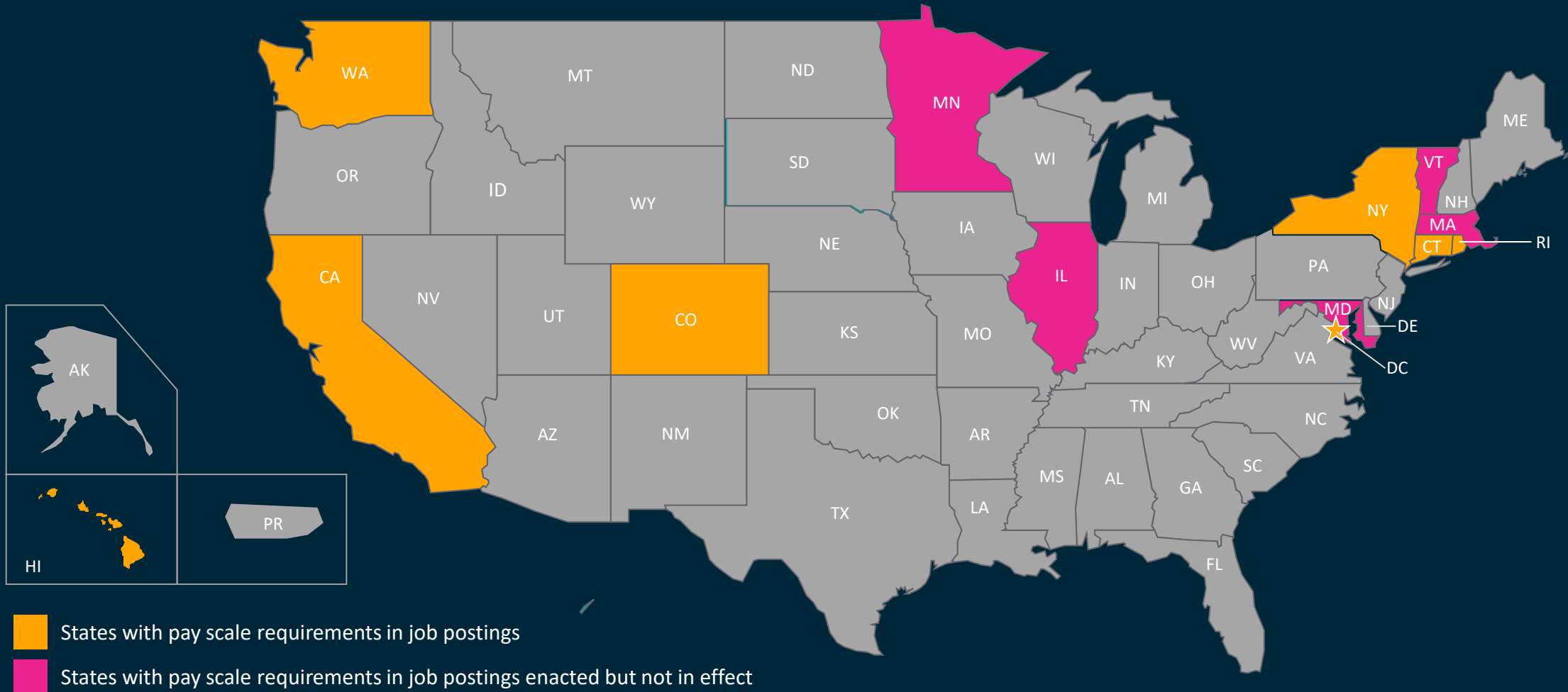
States with Salary Inquiry Bans

- Alabama
- California
- Colorado
- Connecticut
- Delaware
- Hawaii
- Illinois
- Maine
- Maryland
- Massachusetts
- Minnesota
- Nevada
- New Jersey
- New York
- Oregon
- Puerto Rico
- Rhode Island
- Vermont
- Washington
- Washington, D.C.

Cities/Counties with Salary Inquiry Bans

- Toledo/Cincinnati/Columbus, OH
- Westchester/Suffolk/NYC/Albany, NY
- Jersey City, NJ
- Kansas City, MO
- Philadelphia/Lehigh Cty, PA

Pay Scale Requirements in Job Postings





Overview of Pay Transparency Requirements

The Same, But
Different...



New York State

- Post salary ranges in job advertisements for positions that will be performed, in whole or in part, in New York, and for positions reporting to a New York-based supervisor
- The DOL responsible for enforcement

New York State Pay Transparency Act



- Opportunities are covered whether posted by the employer directly or on the employer's behalf by a third party such as through a job-listing website
 - Employers are not responsible for any postings that are re-posted or “scraped” by a third-party website without their consent
- All postings for a job, promotion or transfer opportunity must contain a job description when available except in the limited circumstance where the title conveys the job duties
- For a pay range with “significant breadth,” an employer must provide further information explaining why the range is so broad
- Additional compensation, such as tips, should not be included in base wages

New York City Pay Transparency Act – SUMMARY



- The act covers ads publicized to applicants, regardless of the format. Employment agencies are covered, but not temporary help firm that assign their own employees to perform temporary work at other organizations
- Covers advertisements for jobs that can or will be performed, in whole or in part, in New York City
- The advertisement must include a good faith salary range or ranges of possible hourly rates, but not incentive comp, bonuses, or benefits



Connecticut

- Disclosure upon request or at certain triggering events.
- Private right of action.

Connecticut: Compensation Disclosure Requirements



Connecticut employers must:

Provide an **applicant** the wage range for the position for which the applicant is applying upon the earliest of:

- The applicant's request; or
- Prior to or at the time the applicant is made an offer of compensation

Provide an employee the wage range for the employee's position upon:

- The hiring of the employee;
- A change in the employee's position with the employer; or
- The employee's first request for a wage range



Massachusetts

- Effective 10/31/2025
- Pay ranges for applicants and employees
- No private action except retaliation claims



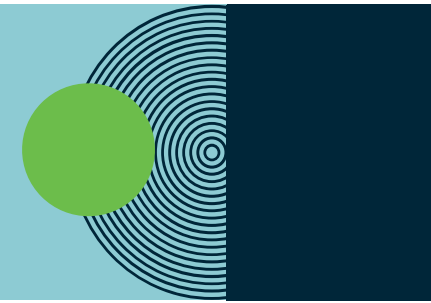
New Jersey

- New Jersey has proposed legislation for the last two years. Nothing enacted.
- Jersey City, NJ implemented pay transparency requirements.

How About the Rest of the U.S.?



Salary Disclosure



To Applicants

- California
- Connecticut
- Illinois
- Maryland
- Massachusetts
- Nevada
- Ohio (in Cincinnati & Toledo)
- Rhode Island

To Employees

- California
- Connecticut
- Massachusetts
- Nevada
- Rhode Island
- Washington





Pay Range in Postings

- Colorado
- California
- Connecticut
- Washington, D.C.
- Hawaii
- Illinois (as of January 1, 2025)
- Maryland
- Massachusetts (as of October 31, 2025)
- Minnesota (as of January 1, 2025)
- Rhode Island
- Vermont (as of July 1, 2025)
- Washington
- Vermont

Don't Forget Benefits!

- **Benefits descriptions can be short:**
 - “Medical, dental, and vision insurance”
 - 401(k) matching, etc.
- **Other forms of compensation**
 - “Eligible for annual performance bonus”
 - “+ commissions”
 - Varies by state

Colorado: So Many More Requirements

- Employers must give their current CO employees notice of all “job opportunities” throughout the entire company.
- Exemptions
- Notification Requirements
 - Pre-selection notices (i.e., promotion posting requirements) and post-selection notices (i.e., new duty to notify of hires/promotions) both apply only to Colorado employees



Pay Reporting

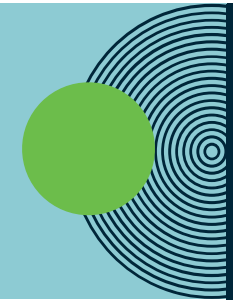
- California
- Illinois
- Massachusetts
(coming 2/1/25)
- NYC's Pending
Legislation



Litigation Trends



Who is Enforcing The Law?



Private Right of Action

- Connecticut
- Nevada
- Washington

State Enforcement

- Department of Labor
- Increasing fines

Most Departments of Labor issue enforcement guidance



Washington Class Actions

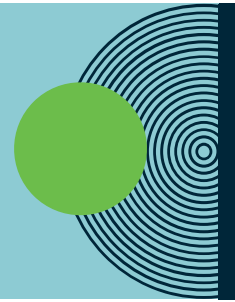
- Dozens of class action lawsuits filed in Washington
- Lawsuits assert technical violations of the statute, including claims that the job postings do not include salary or wage ranges, benefits, and "other compensation" information
- In 2024 settlements are reaching into the millions:
 - Restaurant franchisor agreed to pay \$2MM
 - Multiple technology companies settled between \$500k to \$1MM
 - Multiple hospitality chains agreed to pay between \$750k to \$3MM



The International Landscape



Canada, European Union, Mexico & Central America



Canada

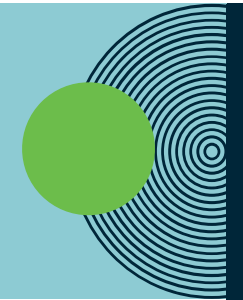
- Provinces of Ontario, Quebec, British Columbia, P.E.I., Nova Scotia, and Newfoundland and Labrador, have all enacted or proposed pay transparency and/or pay equity legislation to enhance pay equity.

European Union

- Directive applies to EU member states and non-EU members with employees in the EU. 24 member states have until June 2026 to implement directive into national law.
- Disclosure and reporting obligations.

Mexico and Central America: no regulation yet.

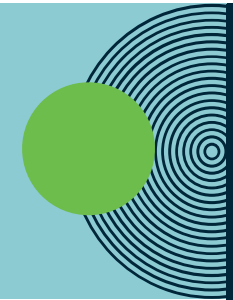
Pay Transparency in APAC



- Only Japan and Australia have pay transparency reporting regulations; but
- It is expected that some similar regulation will be passed in China, India, Singapore and Hong Kong



Brazil, South Africa



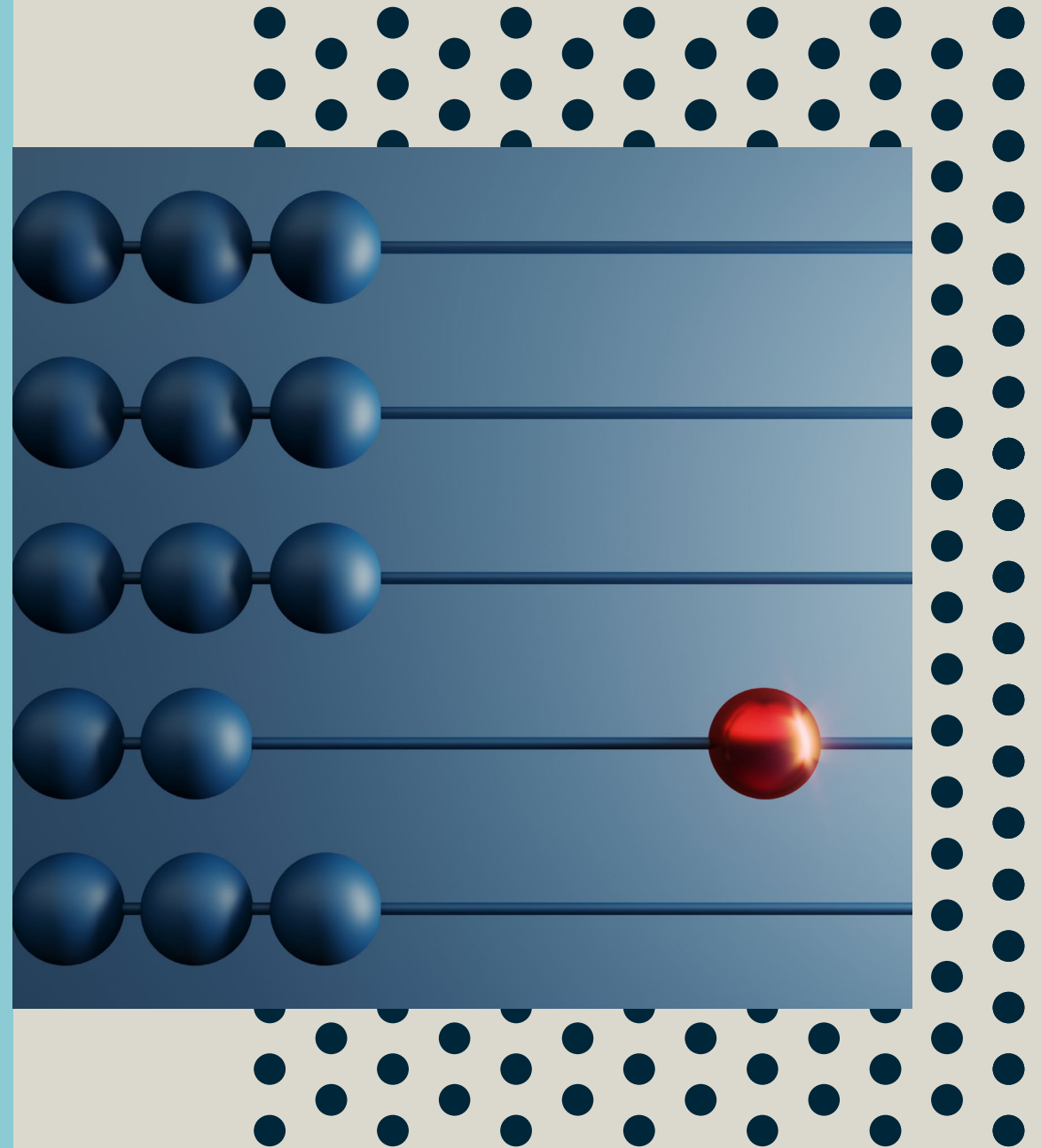
Brazil

- Mandatory posting of semi-annual reports on salary transparency and remuneration criteria.
- Companies to put together Action Plan with workers' rep and unions when there is a gap.

South Africa

- Includes detailed reporting obligations on pay and benefits by gender and job category
- Applies to private employers with 50+, soon to apply to public employers

Applying the Principles



HYPOTHETICAL

We have an internal pay band for the position, but new hires are never brought in at the top of the band. Do we have to post the whole band?

HYPOTHETICAL

During our annual performance review cycle, we are planning to promote one of our engineers from the position of Engineer I to Engineer II because her work product has been excellent over the past year. Do we need to post the position of Engineer II before we promote her?

HYPOTHETICAL

- We pay a radio station to announce that we're hiring for positions.
- We also use social media to say, "now hiring talented people!"
- Does the radio announcer have to advertise the salary? What about the social media post?

HYPOTHETICAL

XYZ Company's preferred candidate has a master's degree even though the job description calls for a bachelor's degree. Can XYZ offer a salary above the posted range?

HYPOTHETICAL

- XYZ Company is hiring Software Engineers who can work remotely from anywhere in the U.S. XYZ pays geographic differentials based on where the hired employee will work, with State A in the middle of three tiers.
- Does XYZ have to specify the Colorado range in their posting?

HYPOTHETICAL

We want to promote one of our engineers at our factory in Shenzhen, China to give her a minor management role over two direct reports in the Shenzhen factory. Do we need to notify our global employees and post pay range?

HYPOTHETICAL

For states that require disclosure of commissions, do we need to provide the formula and criteria from our 8-page commission plan in our postings to be complaint?

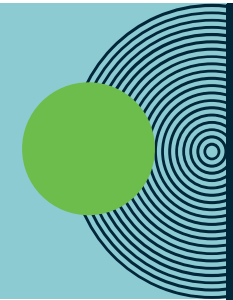
HYPOTHETICAL

My company is fully remote now. How do I know which positions need to have a pay range posted?

What is an Employer to Do?



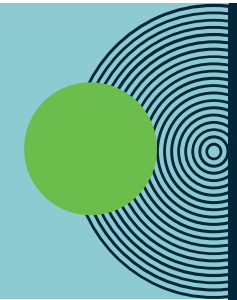
Conduct a Pay Audit



- Identify and address inequities before pay transparency practices begin.
- Look closely at current discrepancies.
- This may be an opportunity to ensure appropriate pay before disclosure requirements kick in.



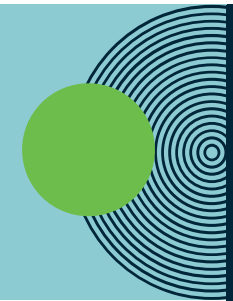
Evaluate Compensation Practices



- How is initial compensation set?
- Do you have internal bands? Should you?
- What factors dictate where employees fall on scale?
- How is compensation evaluated once employed?
- Is pay subsequently evaluated to spot potential discrepancies?
- Are justified discrepancies documented?



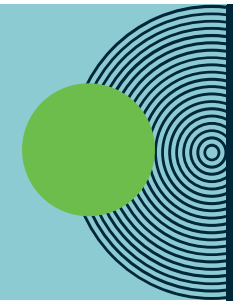
Strategic Considerations in Setting Compensation: Audience



- Consider audience:
 - Outside applicants
 - Your current employees!
 - What does each audience take from the posted range? No one likes to be at the bottom...



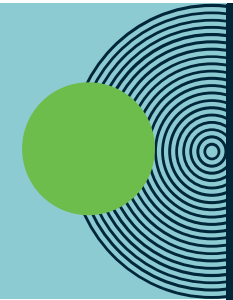
Strategic Considerations in Setting Compensation: Geography



- Do you use a national range? State specific? Ranges within state?
- How do you represent this in the posting



Transparent Communication



- Before, during and after instituting changes, leaders should have a communication plan.
- Consider formal messages and guidelines for responding to questions from employees.



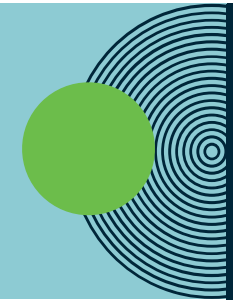
Training



- Train recruiters on posting requirements
- Train first line managers on posting requirements and responding to inquiries

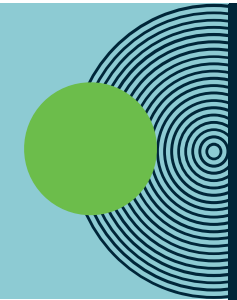


Remote Work Considerations



If it's not clear for a virtual position the location from which the person intends to perform the job, include a question **asking where the applicant would intend to work.**

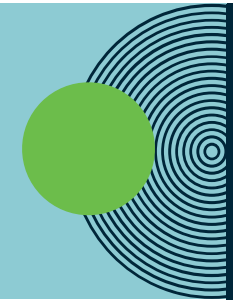
Remote Work Considerations



Tell applicants/new hires that they are approved to work from X location but need advance approval to move to another location because Company does not conduct business in all jurisdictions.

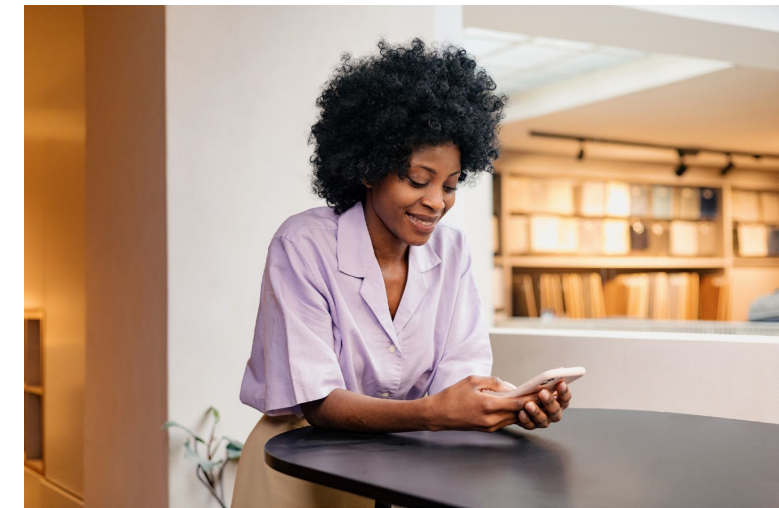


Remote Work Considerations



Employers should consider **where the employer is located *and* where the job will be performed**

Example: if you have an applicant for a virtual position in New York, you must comply with New York law



Job Postings

- You can base pay decisions on the applicant's salary expectations and based on their skills, education, training, experience (or if travel is a regular and necessary part of the work performed)

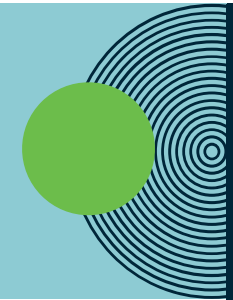


- CAN DISCUSS SALARY EXPECTATIONS
(NOT BASED UPON CURRENT PAY)



DON'T DISCUSS WAGE HISTORY

Practical Considerations for Employers



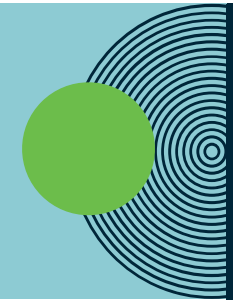
- Modify policies (disciplinary, compensation, retaliation, EEO, etc.) regarding disclosing and/or requesting salary information
- Review compensation and compensation-related policies and guidelines for compliance with fair pay requirements



One last question...



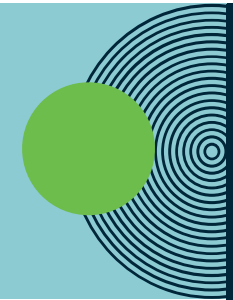
Will it work?



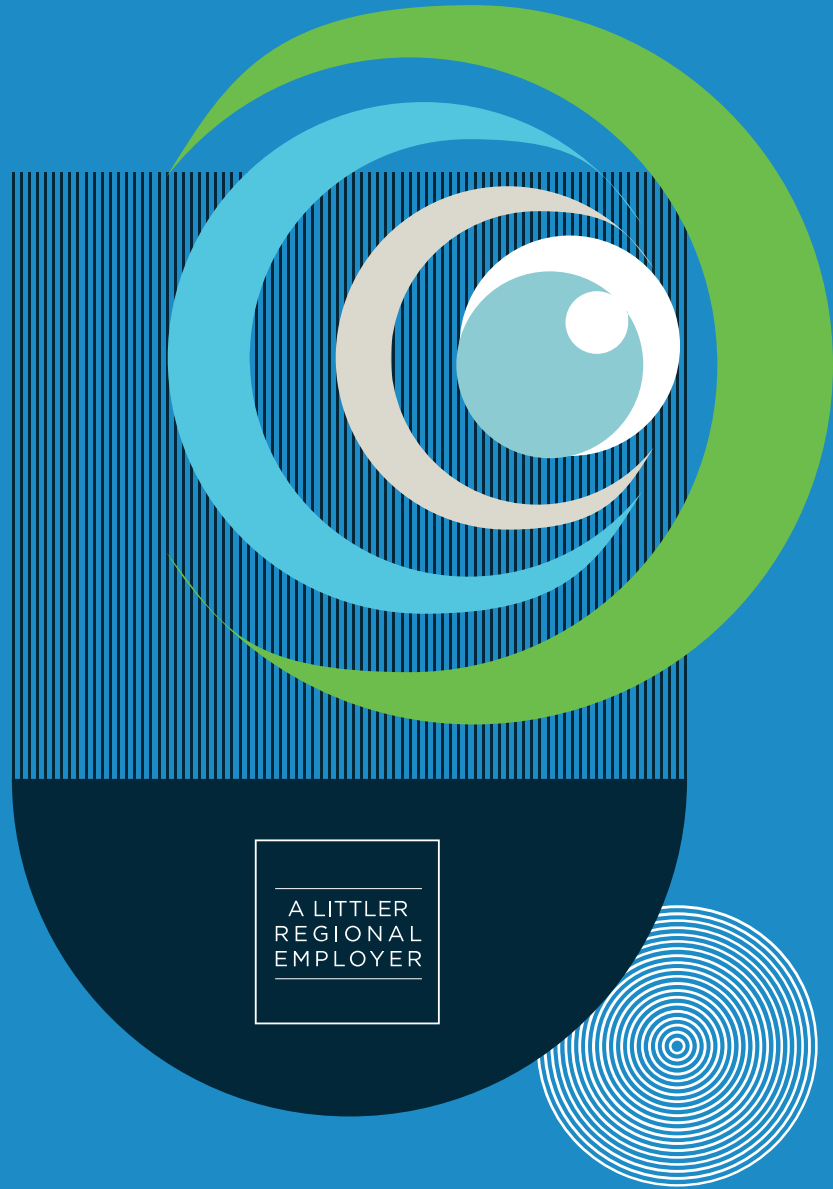
- Historically, women have remained at an 82% gap in wages for 20 years
- Will these new laws trend salaries in the right direction?
- Pay equity audits are causing adjustments



Effect of Pay Equity?



- A 2021 paper from the National Bureau of Economic Research concluded that salary range disclosure on job listings has driven down wages by an average of 2% since a significant number of states have adopted the policy.
- As cited in the CDLE's INFO #9A, a 2023 paper by David Arnold, Simon Quach, & Bledi Taska, *The Impact of Pay Transparency in Job Postings on the Labor Market* found higher posted and paid salaries in Colorado, above inflation, due to increased pay transparency in job postings.



THANK YOU

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