



— WASHINGTON —

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**Pay Transparency &  
Immigration Sponsorship**

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# Introduction



# The Evolving Landscape of Pay Transparency



- Employees want transparency
  - Monster.com poll found 98% of workers believe companies should put salary ranges on ads, 53% won't apply unless info is provided
- Employees believe that transparency will:
  - Ensure good match/not waste time
  - Eventually lead to salary equity and smaller/no pay gaps
  - Higher pay overall for all workers
  - Provide leverage to get a raise



# The Evolving Landscape of Pay Transparency



- Employers worry that pay transparency will:
  - Turn off potential candidates
  - Not provide clear picture of total comp/benefits
  - Cause employee morale issues
  - Give rise to unnecessary legal risk

# Grass roots efforts to create more transparency

- Glassdoor, Indeed
- Social media
- Tiktok

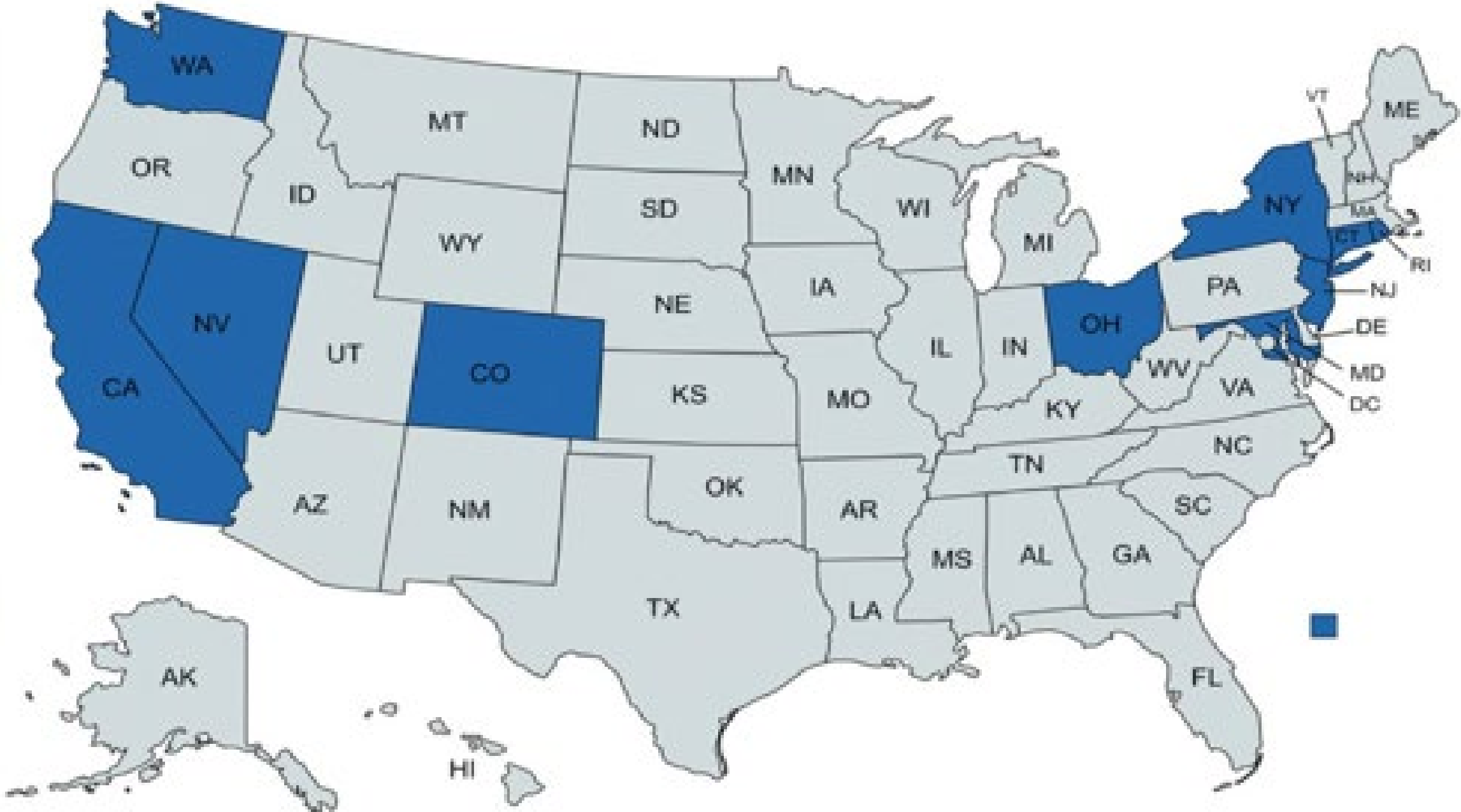


# Growing, National Pay Transparency Trend



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# Growing, National Pay Transparency Trend



- What Employers Should Do?
  - Look nationally, across jurisdictions, how employee compensation is structured.
  - Consider a workplace audit of current employee salaries
    - At best, employee pay disparities effect employee contentment and attrition
    - At worst, employee pay disparities may implicate pay equity laws, and may lead to a lawsuit (including potential class actions)
- Develop plan to create for all jobs a salary range or wage scale
  - Develop a process for all jobs to publish salary ranges or wages scales along with general descriptions of benefits.

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Amendment to  
Washington's Equal  
Pay & Opportunities Act  
Requires Employers to  
Disclose Salary and  
Benefit Information in  
Job Postings





# The Basics – What Was Already Required



- Who?
  - Employers with 1 or more employees
- What?
  - Must provide “similarly-employed” workers equal compensation
    - Job titles not determinative
    - Performance of job requires similar skills, efforts, responsibilities, and working condition.
  - Must not limit career advancement opportunities on the basis of gender



# The Basics – What Was Already Required



- Who?
  - Employers with 1 or more employees
- What?
  - Employers cannot prohibit employees from inquiring about, disclosing, comparing, or discussing their wages, including pay and benefits, with others.



# The Basics – What Was Already Required



- Who?
  - Employers with 1 or more employees
- What?
  - Cannot ask for an applicant's salary history or require that an applicant's prior wage or salary history meet certain criteria.



# The Basics of What's New

- When?
  - Starting January 1, 2023
- Who?
  - Employers with 15 or more employees
- What?
  - Must disclose in all job postings:
    - Salary range or wage scale
      - General description of all benefits
      - General description of “other compensation”



## Q: What employers must comply?

A: All employers with 15 or more employees must comply, if they have 1 or more WA-based employees. The law also applies if the employer has at least 15 employees and posts for a position that could be filled with a Washington employee.



**Q: What if the job posting is for remote work that could be filled by a Washington-based employee?**

**A: If employer is soliciting applicants (including current employees) for a position that could be filled by a Washington-based employee, they must comply.**



**Q: Does the new law apply to job postings for positions that must be filled outside of Washington?**

**A: If the job posting is for a position that is tied to a worksite physically located outside of Washington, employers do not need to include the wage and salary information.**



## Q: What is a “job posting”?

**A:** A job posting is any solicitation meant to recruit applicants:

- Electronic/print copy
- By employer or third party
- References specific position
- Lists qualifications for desired applications.





## Q: What is a “job posting”?

This may include:

- Posting on Company’s website
- Posting on electronic job board
- Social media posts
- Window signs



**Q: What wage/salary  
information must be included?**

**A:** Each job posting must include the expected wage scale or salary range for the position.



**Q: What is a salary range or wage scale?**

**A:** “Most reasonable and genuinely expected range of compensation for the job.”

“The range should extend from the lowest to the highest pay established by the employer prior to publishing the job posting.”



**Q: What is a salary range or wage scale?**

**A:** A salary range or wage scale should be clear without open-ended phrases such as \$50,000 per year and up (with no top of the range) or up to \$45.00/hour (with no bottom of scale)



## Q: What wage/salary information must be included?

### A: Examples:

- \$25-\$30 per hour
- \$65,000-\$85,000 per year
- Commission based salesperson – 4-8 % of net sale price per unit
- \$.55-\$.75 per pound of strawberries picked
- The greater of \$.75 per pound of strawberries picked or \$19.00 per hour



## Q: What if the posted position can be filled with different job titles?

A: If the employer is posting for a position that can be filled with different job titles, the employer should specify in the posting the salary range or wage scale for each job title that could ultimately fill the position. For example:

- Associate Step 1: \$50,000 - \$60,000 per year
- Associate Step 2: \$60,000 - \$70,000 per year
- Associate Step 3: \$70,000 - \$80,000 per year



## Q: What if the posted position has a starting range?

**A:** The employer must list:

- The starting salary range or wage scale for the initial employment timeframe (or probationary period); and
- The entire salary range or wage scale expected later



**Q: What if the posted position has a starting range?**

**A:** Employers must include a “general description of all benefits” including by way of example:

- Health care benefits
- Life insurance
- Disability Insurance
- Retirement benefits
- Benefits permitting days off





## Q: What is a “general description”?

**A:**

Insurance

- The employer offers different types of insurance should list them out (e.g., medical insurance, vision, dental, etc.)



# Q: What is a “general description”?

**A:**

Retirement plans

- If the employer offers retirement benefits, it should list the retirement options (e.g., 401k, deferred compensation, etc.)



## Q: What is a “general description”?

**A:**

Holidays

- If the employer offers paid holidays, it should state the number of paid holidays the employee will receive once hired.



## Q: What is a “general description”?

**A:**

Paid Time Off/Vacation

- If the employer offers PTO or vacation, it should specify the amount of PTO/vacation the employee will receive once hired



## Q: What is a “general description”?

**A:**

More Generous Paid Sick Leave

- If the employer offers PST beyond that required by law, it should specify the amount of PST the employee will receive once hired.



# Q: What “Other Compensation” Must be Included?

**A:** Any forms of compensation offered in addition to the salary or wages, including by way of example:

- Any commissions
- Any bonuses
- Profit sharing
- Stock options
- Housing allowances
- Tuition reimbursements



**Q: Can employers use links to benefit summaries and “other compensation” information in electronic postings?**

**A:** Employers who utilize electronic job postings must include the general description but may use links that route the applicant to another page where more detailed descriptions can be found.



**Q: What if the employer hires the applicant into a position that is different than the position the employee applied for?**

**A:** If the employer decides to offer the applicant a different position than the applied-for position, the employer should provide the applicant with the job posting (that includes the wage and salary information) for the position offered.





## Q: How is the law enforced?

A: L&I may investigate any complaint, issue a citation, and notice of assessment, including for:

- Statutory damages equal to actual damages or \$5,000 (whichever is greater)
- A civil penalty: first violation-\$500; repeat violations-\$1,000 or 10% of actual damages (whichever is greater)
- Actual damages
- Interest
- Investigation and enforcement costs



## Q: How is the law enforced?

**A:** An employee may also pursue a private right of action within 3 years of the alleged violation:

- Statutory damages equal to actual damages or \$5,000 (whichever is greater)
- A civil penalty: first violation-\$500; repeat violations-\$1,000 or 10% of actual damages (whichever is greater)
- Actual damages
- Interest
- Reasonably attorneys' fees and costs



**Q: Are there record keeping requirements?**

**A:** No. But employers may want to keep records of job postings for up to 3 years, to defend against potential claims.



# The Great Unknown

- Website Aggregators.
- Employee Negotiates Higher Salary or Wage.
- Tipped Employees.
- Signing Bonuses.
- Rate of Pay vs. Salary Range



# The Great Unknown

- Salary Range for How Long
- Current Postings



# Green Cards for Employees



# Green Card Process: Key Steps

- U.S. Department of Labor
  - File prevailing wage request
  - Test the labor market
  - Receive prevailing wage determination
  - File PERM application
- U.S. Citizenship & Immigration Services (USCIS)
  - File I-140 Petition for Alien Worker

# PERM Labor Market Test

## Required:

- Newspaper ads
- Bulletin board posting
- State Workforce Agency (SWA) posting





# PERM Labor Market Test



## Addition recruitment – pick 3:

- Local newspaper
- Job search website
- Employer website
- Employee referral program
- Job fair
- On-campus recruiting or on-campus placement
- Trade or professional organization
- Radio or tv ads



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Under Pay Transparency, all  
PERM recruitment must  
include prevailing wage and  
benefits



# Salary vs. Prevailing Wage



- DOL determines prevailing wage, based on factors:
  - Years of experience
  - Degree required
  - Special skills and requirements
  - Travel required
- Prevailing wage sources:
  - Government wage data
  - Private wage surveys

# PERM Recruitment Issues

- Long DOL processing times
- Prevailing wage determination may exceed actual salary
- Pay Transparency law requires posting future wage and a “general description of all benefits”
- Costly newspaper ads



# Balancing Risks

- DOL compliance
- Pay Transparency law compliance



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