

# Show and Tell: Pay Transparency and Disclosure Requirements Go Primetime



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# Presented by



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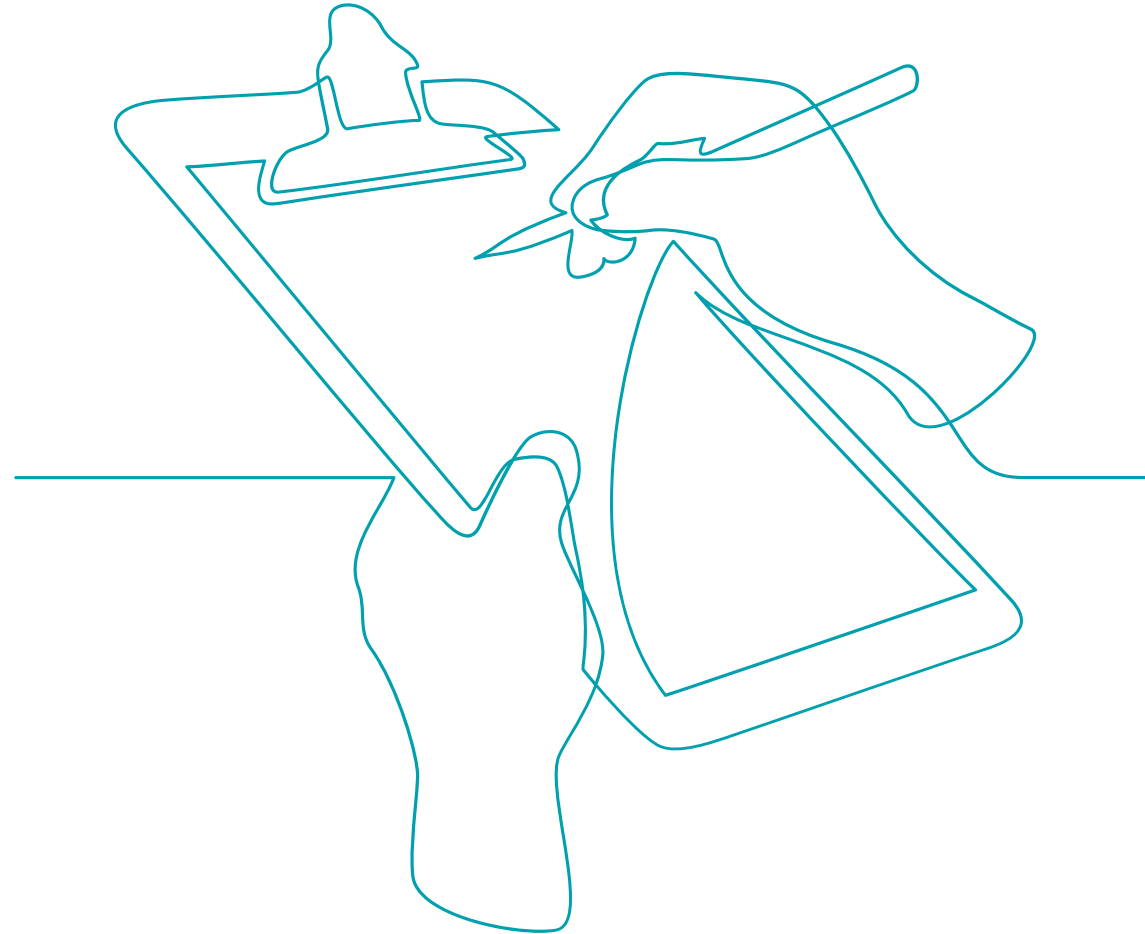
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# Agenda

- **Introduction to the Issue of Pay Transparency**
  - Employers & employees' competing interests
  - The role of federal labor law
  - The current state of laws in NC and SC
- **The New Wage Transparency Law Revolution**
  - What jurisdictions have these laws?
  - What do they require?
  - The implications of these laws for remote workforces
- **Practical Guidance for Employers**
- **Questions**





# Setting the Stage

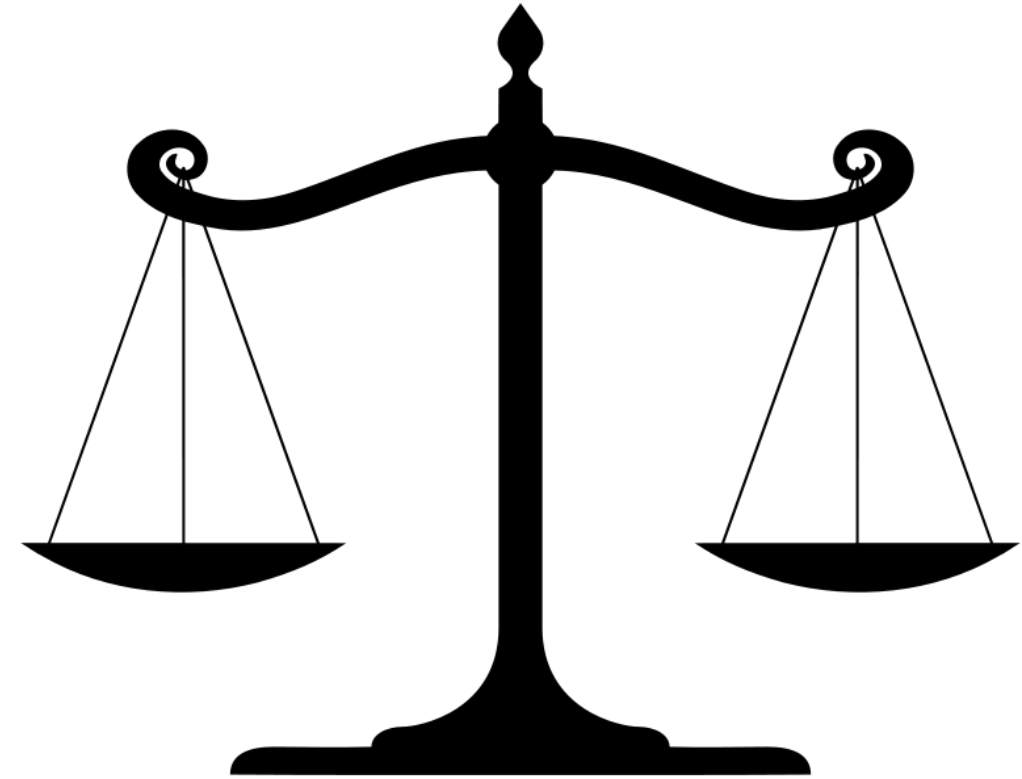
# Competing Interests...

- “Pay transparency” refers to employers’ openness about the compensation it provides to current and prospective employees.
- Historically, employers and employees have competing interests when it comes to pay transparency.
- Perspectives on pay transparency issues have undergone a generational shift.



# Why Is Pay Transparency Important? Fair Pay!

Understanding what employers are willing to pay, and what others are earning, are key data points for employees trying to make sure they are being paid fairly.



# Why Is Pay Transparency Important? Pay Equity!

- Pay transparency also is key to employees understanding potential pay disparities.
- It is important to remember that the most recent Census Bureau data shows that in 2021 women earned about \$0.82 for every dollar men earned.
- Because of these issues, lawmakers have long focused on pay transparency as a means of protecting workers' rights and as a first step in promoting pay equity.

# The National Labor Relations Act

- Section 7 of the NLRA gives most non-supervisory employees in the private sector the right to engage in “concerted activities for the purpose of ... mutual aid or protection.”
- The NLRB has long interpreted this to include the right to communicate about wages.
- Employers may not have policies prohibiting wage discussions or interrogate/retaliate against employees for having such discussions.
- This is true whether you are unionized or not.







# The Spreading Revolution in Wage Transparency Laws

# Pay Scale Disclosure Requirements

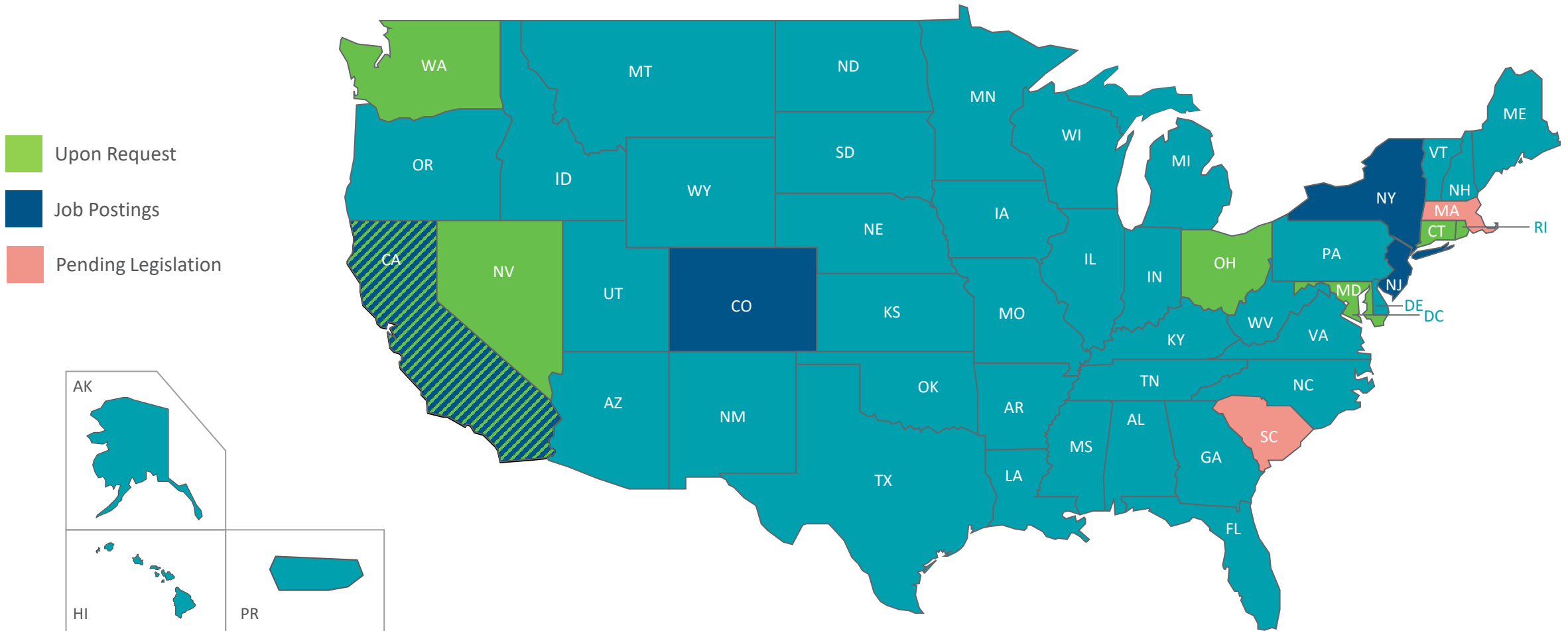


**NATIONWIDE  
TREND**

## Impacted Jurisdictions to Date:

- California (amended law effective Jan. 1, 2023)
- Colorado (far-reaching implications)
- Connecticut
- Maryland
- Nevada
- Jersey City, New Jersey (effective Apr. 13, 2022)
- NYC, Ithaca, Westchester County, Albany County (effective Nov. 1, Sept. 1, Nov. 6, 2022, Feb. 12, 2023)
- New York State (effective Sept. 17, 2023)
- Toledo and Cincinnati, Ohio
- Rhode Island (effective Jan. 1, 2023)
- Washington State (effective Jan. 1, 2023)

# States With Wage Transparency Laws



# REQUIREMENTS IN THE CAROLINAS

## North Carolina employers must notify its employees:

- In writing, at the time of hire, of the promised wages and the day and place for payment of same. N.C.G.S. § 95-25(1).
- In writing about any changes, except increases, to promised wages at least one pay period before making any changes to promised wages. N.C.G.S. § 95-25(3).

## South Carolina employers must notify its employees:

- In writing, at the time of hiring, of the normal hours, wages agreed upon, and time and place of employment. S.C. Code § 41-10-30.
- About any changes to the above terms in writing, at least 7 calendar days before the change takes effect. S.C. Code § 41-10-30

# TRANSPARENCY LAWS IN THE CAROLINAS? NOT QUITE.

## North Carolina Equal Pay Act (NC Senate Bill 338):

- Prohibits employers from seeking a prospective employee's salary history.
- Any exception?
  - After providing the prospective employee an offer with compensation details, the prospective employee may provide written authorization to the employer to confirm her prior wages.

## Act to Establish Pay Equity (South Carolina House Bill 417 and Senate Bill 383):

- Prohibits employers from seeking an applicant's wage history.
- Any exception?
  - After providing the prospective employee an offer with compensation details, an employer may:
    - (a) seek to confirm the prospective employee's wage history to support providing higher wages than initially offered and;
    - (b) rely on wage history to support providing higher wages to the prospective employee, if the employee voluntarily provides her wage history.

# The Virginia Pay Transparency Law



- Virginia passed its own Pay Transparency Law in 2020 (Va. Code § 40.1-28.7:9).
- Employers prohibited from retaliating against an employee because:
  - He/she inquired about, discussed with, or disclosed to another employee....
  - Any information about their wages or any other employee’s wages
- Not limited to private employers, non-supervisory employees, or “concerted activities.”
- Virginia DOLI may assess civil penalty of up to \$100 for each violation (depending on employer’s size and gravity of situation).

# New Wave of Pay Transparency Laws

- In **15 jurisdictions** (and counting), employers must affirmatively – and sometimes proactively – disclose the pay range for a given position under specific circumstances.
- Requirements largely fall into one or more of three buckets:
  1. Upon request by applicant or employee
  2. Following interview, upon hire, or upon transfer/promotion
  3. On job postings for positions that could be performed in the relevant state/city

# Disclosure Required On Job Postings


Jurisdiction	Under What Circumstances?
California	Job <b>could be</b> filled in CA
Colorado	Job either (1) tied to CO site or (2) <b>could be</b> performed in CO
NYC, Westchester County	Job to be performed at least in part within jurisdiction (NYC and Westchester County only).
Ithaca, Albany	No geographic specifications.
New York State	Job <b>could be</b> performed in NY. New jobs, as well as transfer and promotion opportunities.
Jersey City, NJ	Job postings and advertisements (no geographic specifications).
Washington State	Job to be performed at least partially in WA.




# How's it Going?

 **Outside Sales Representative**  
Alarm Detection Systems  
Louisville, CO (Hybrid)  
\$40K/yr - \$70K/yr (from job description) · 401(k)  
Actively recruiting  
Promoted · 11 applicants


 **Dealer Service Representative**  
Eagle Creek  
Steamboat Springs, CO (Hybrid)  
\$23/hr - \$27/hr · 4 benefits  
Actively recruiting  
Promoted · 15 applicants · Easy Apply

 **Inside Sales Representative**  
Rexel USA  
Colorado Springs, CO (On-site)  
\$21/hr - \$30/hr  
Promoted · 2 applicants

 **Manager Sales**  
IDEMIA  
Arvada, CO (Hybrid)  
\$70K/yr - \$130K/yr (from job description)  
Actively recruiting  
Promoted · 7 applicants

BUSINESS • News

## Colorado remote workers need not apply: Companies avoid state due to salary-posting law

 **Mechanical Estimator**  
Bristol Bay Construction Holdings LLC  
Escondido, CA (On-site)  
\$130K/yr - \$170K/yr · 4 benefits  
1 connection works here  
Promoted · Easy Apply

- **The Transparency Perk:** Nearly 2 in 3 employees (63%) prefer to work at a company that discloses pay information over one that does not. Yet only 19% of employees say their company discloses pay ranges internally among all employees.

 **UL 508a Electrical Panel Team Lead**  
Sof-Tek  
Redding  
\$65K/yr -  
Promoted

## NYC employers are skirting the game-changing pay transparency law by listing \$100,000-plus salary ranges for jobs

 **Constru Ausonio**  
Castrovil  
BY JEFF GREEN, RICHARD ABBEY, ERIC FAN AND BLOOMBERG  
November 4, 2022 at 11:31 AM EDT  
Medical, I  
Actively recruiting  
Promoted · 12 applicants · Easy Apply



 **Project Engineer**  
Envent Corporation  
Pittsburg, CA (On-site)  
\$85K/yr - \$125K/yr · 4 benefits  
Actively recruiting

1. For all positions with a position located in California, Colorado, NYs or NYC (as well as Ithaca, Westchester County, NY) AND
2. For remote positions where the job duties could be performed by a remote worker located in Colorado or NYC and NYS (as well as Ithaca, Westchester County, NY)

The base compensation range for this position is \$\_\_\_ to \$\_\_\_ per annum. Your actual base salary will be determined based upon a number of factors which may include relevant experience, skills, location (labor market data), credentials (education, certifications), and internal equity.

# Disclosure Required Upon Request

Jurisdiction	Under What Circumstances?
California	(1) Upon <b>reasonable</b> request (applicant) (2) Upon request (employee)
Connecticut	(1) Applicant's request or by the time of offering compensation (applicant) (2) Employee's <b>first</b> request (employee)
Maryland	On request (applicants only)
Nevada	On request when applying for transfer or promotion (employees only)
Ohio (Toledo and Cincinnati)	On <b>reasonable</b> request by applicant after applicant provided conditional offer of employment
Rhode Island	(1) Upon request by applicants or employees (2) <b>Should</b> disclose prior to discussing compensation with applicant
Washington State	On request of employee offered position (includes transfer or promotion)

# Disclosure Required Post-Interview or On Hire/Transfer/Promotion

Jurisdiction	Under What Circumstances?
Colorado	Prior to making promotion decision
Connecticut	(1) On hire (2) “Change in the employee’s position with the employer”
Nevada	(1) After completing interview (both applicants and employees) (2) After <b>applying for</b> transfer or promotion
Rhode Island	(1) At time of hire (2) “When the employee moves into a new position”
Washington State	When employee is offered transfer or promotion <i>and requests it</i>

# Enforcement and Remedies

- California/Colorado – Private right of action and civil penalties up to 10K
- Washington State - DOL investigation and private cause of action. Can be ordered to pay actual damages, penalty up to \$5,000, cost of investigation/attorney fees. *RCW 49.58.060-070*
- Connecticut – Private cause of action. Remedies include civil penalty, compensatory damages, punitive damages, attorney fees.
- NY State - No private right of action. However, investigation and civil penalties up to \$3,000 per violation.
- Nevada – administrative complaint with Equal Rights Comm'n and civil action. *Nev. Rev. Stat. Sec. 233.160, 613.430*



# What's an Employer to Do?

# A Real Headache for Employers of Remote Workers!

- Even though North Carolina is not one of the jurisdictions to pass a new law requiring pay disclosure, that doesn't mean that these laws don't impact North Carolina employers.
- During the COVID-19 pandemic, we've seen an explosion in employers' willingness to consider remote work arrangements.
- Such arrangements can implicate these "new wave" wage transparency laws if you hire an employee in one of these jurisdictions...
- ...or even if you post a job opening that could be performed by someone working remotely in some of these jurisdictions.



# Job Postings

- If the candidate provides their current pay, and states a minimum salary they would require to move to your company *based upon their current pay*:
  - YOUR RESPONSE: “Company does not set pay based upon wage history” and steer the dialogue to the candidate’s expectations for what they want to earn at Company”
- You **can** base pay decisions on the applicant’s salary expectations and, also, 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**

# Strategies for Posting Pay Range/Pay Scale

- **Post lower range initially** to determine what kind of candidate the lower range attracts
- **Re-post with a higher pay range** if lower range does not attract qualified candidates
- **Develop several levels within each position** (e.g., HR Generalist I, HR Generalist II, Sr. HR Generalist) with pay ranges for each level
  - Instead of a larger pay range that applies to all roles





# Pay Transparency Laws & Virtual Work



Pay transparency laws apply to **the location 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



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**

Add this question to all positions where virtual work is possible



Can tell applicants/new hires that they would be approved to work from X location, but would need advance approval to move to another location because Company does not conduct business in all jurisdictions



# Practical Considerations for Employers

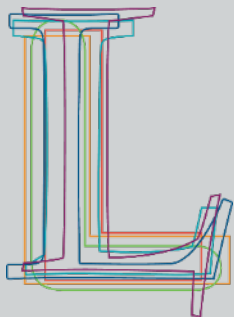


- Modify policies (disciplinary, compensation, retaliation, EEO, etc.) regarding disclosing and/or requesting salary information.
- Review compensation and compensation-related policies and guidelines for compliance with fair pay requirements.

# Evaluate Internal Practices and Train

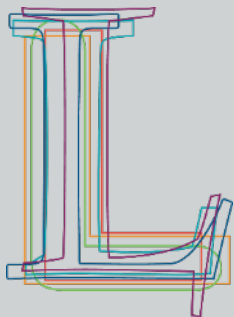
- How is initial compensation set?
- What factors dictate where employees fall on scale?
- Recruiters/Managers trained?
- How is compensation evaluated once employed?
- Is pay subsequently evaluated to spot potential discrepancies?
- Are justified discrepancies documented?
- Don't forget promotions and demotions!





# Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



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