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Washington, D.C., Joins the Trend Toward Requiring Pay Disclosures in Job Postings

By Kristie Iacopetta and Annette Tyman

In this article, the authors review legislation signed by the mayor of the District of Columbia requiring employers to disclose salary ranges in all job listings and position descriptions advertised.

The mayor of Washington, D.C., Muriel Bowser has signed D.C. Act 25-367, the Wage Transparency Omnibus Amendment Act of 2023¹ (the Act), which will amend the Wage Transparency Act of 2014. The action puts Washington, D.C., one step closer to joining the growing list of jurisdictions requiring pay ranges in job listings and advertisements.

The new law, which applies to employers with at least one employee in the District, will also require employers to disclose to prospective employees the existence of healthcare benefits they may receive, prior to the first interview. It will also expand the District's current law to prohibit employers from seeking wage history information of prospective employees or screening prospective employees based on their wage history. The Office of the Attorney General will have enforcement authority. The Act becomes effective as of June 30, 2024.

REQUIRED PAY DISCLOSURES IN JOB LISTINGS AND POSITION DESCRIPTIONS ADVERTISED

The Act will require that employers provide the minimum and maximum projected salary or hourly pay in all job listings and position

The authors, partners with Seyfarth Shaw LLP, may be contacted at kiacopetta@seyfarth.com and atyman@seyfarth.com, respectively.

descriptions advertised. In stating the minimum and maximum salary or hourly pay for the position, the range must extend from the lowest to the highest salary or hourly pay that the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion, or transfer opportunity.

HEALTHCARE BENEFIT DISCLOSURE PRIOR TO INTERVIEW

The Act also requires that employers include information on the healthcare benefits offered to employees before the first interview. The law does not define “first interview,” nor does it specify whether a general description of the benefits is sufficient or if more detailed information may be required. There is no requirement, however, to include the healthcare benefit information in the job posting for the open position.

If an employer fails to disclose the pay range in a job listing or advertised position description, or fails to disclose the existence of healthcare benefits prior to the interview, the prospective employee is permitted to ask about such disclosures.

PROHIBITION ON SEEKING OR USING “WAGE HISTORY”

The Act will also limit employers’ ability to seek or use a prospective employee’s wage history in several ways.

First, it prohibits employers from screening prospective employees based on their “wage history,” including by requiring that the wage history satisfy minimum or maximum criteria or by requiring the prospective employee to disclose their wage history as a condition of being interviewed or continuing to be considered for an offer of employment.

Second, the Act will also prohibit employers from seeking the wage history of a prospective employee from a person who previously employed the individual. The term “wage history” is defined as “information related to compensation an employee has received from other or previous employment.”

Further, the definition of “compensation” is expansive and includes “all forms of monetary and nonmonetary benefits an employer provides or promises to provide an employee in exchange for the employee’s services to the employer.”

REQUIRED NOTICE OF RIGHTS

Covered employers will also have another notice to add to the collection of required federal and state employment posters. The Act will

require employers to post a notice in a conspicuous place in the workplace notifying employees of their rights under the Wage Transparency Act. The notice must be posted in at least one location where employees congregate.

ENFORCEMENT AND POTENTIAL REMEDIES

The Act will authorize the Attorney General to investigate whether an employer has violated the Act, including examining witnesses under oath, issuing subpoenas, compelling attendance of witnesses and production of documents, and taking depositions and affidavits. It also allows the Attorney General to bring a civil action against an employer for violating the Act for restitution or for injunctive, compensatory, or other authorized relief for an individual or the public at large. If successful, the Attorney General will be entitled to reasonable attorneys' fees and costs and statutory penalties equal to any administrative penalties provided by law.

NEXT STEPS FOR EMPLOYERS

District employers should start taking steps now to prepare to comply with these requirements and prohibitions. Employers should consider how they will appropriately identify pay ranges to include in their job postings. For those employers who have already begun to include pay ranges in all of their postings to address the patchwork of laws in other jurisdictions requiring such disclosures, you should consider whether your current approach to disclosures will be compliant in the District.

In addition to preparing to update job postings and advertised job descriptions, employers should also consider training for hiring managers, talent acquisition, and other human resources professionals to ensure there is a process in place to disclose healthcare benefits prior to a first interview and the restrictions on seeking or using wage history.

Additionally, employers should also consider conducting a privileged review of employee compensation to determine whether there are unexplained discrepancies that should be addressed prior to publishing pay ranges.

NOTE

1. https://lms.dccouncil.gov/downloads/LIMS/52488/Signed_Act/B25-0194-Signed_Act.pdf?Id=183410.

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