



Reflecting on Equal Pay Day 2024:

Assessing the International Equal Pay Landscape

March 2024

Seyfarth Shaw LLP

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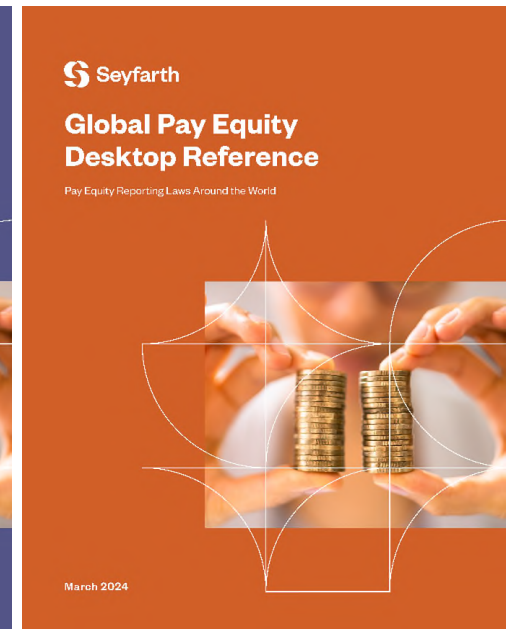
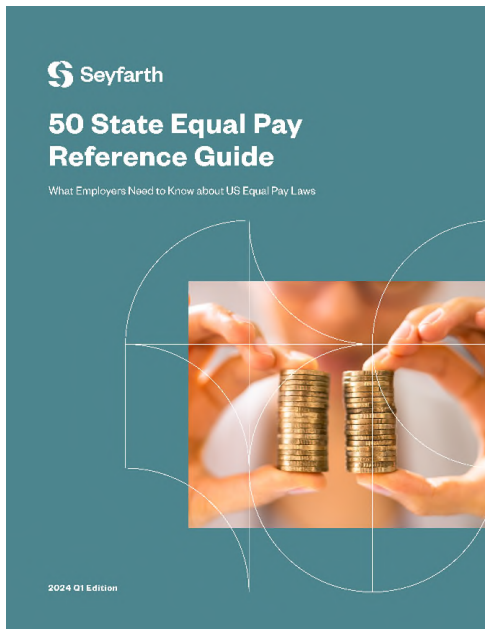


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Available Today - Four New Resources



Cross-Border Equal Pay Trends



Pay Range Disclosures



Pay Reporting



Pay Assessments



Salary History Ban



Expanded Definition of Comparable Work



Stakeholder Activity



US Pay Transparency Requirements

Overview of Current U.S. Pay Disclosure Requirements

On Job Posting

- California
- Colorado
- Hawaii
- Illinois (*eff. 1/1/2025*)
- New Jersey (Jersey City)
- New York State (Albany County, Ithaca, NYC)
- Washington
- Washington, DC (*eff. 6/30/24*)

Upon Request

- Maryland
- Ohio (Cincinnati & Toledo)

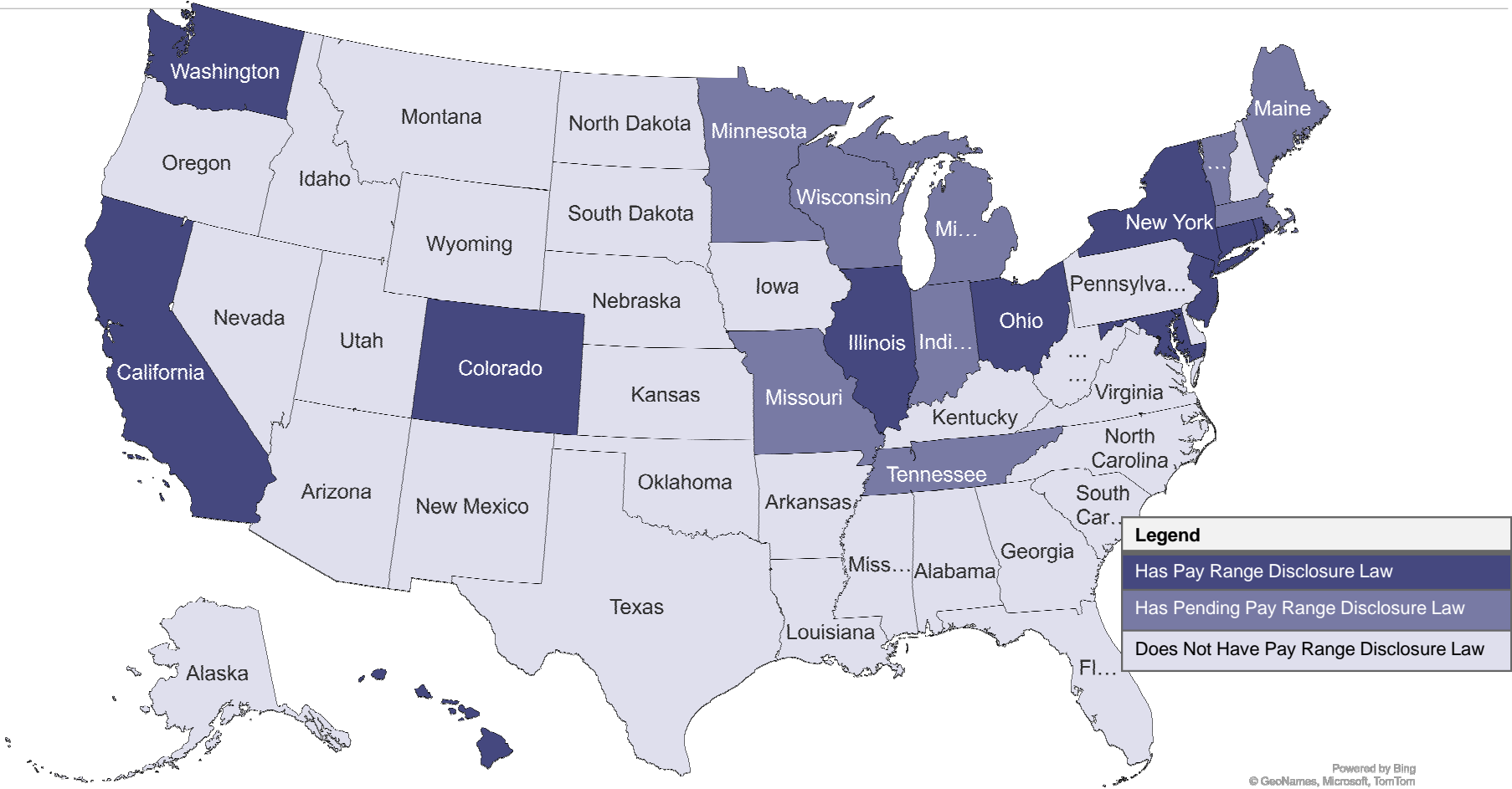
Other

- Connecticut
- Nevada
- Rhode Island

JDs with Pay Range Disclosure Requirements

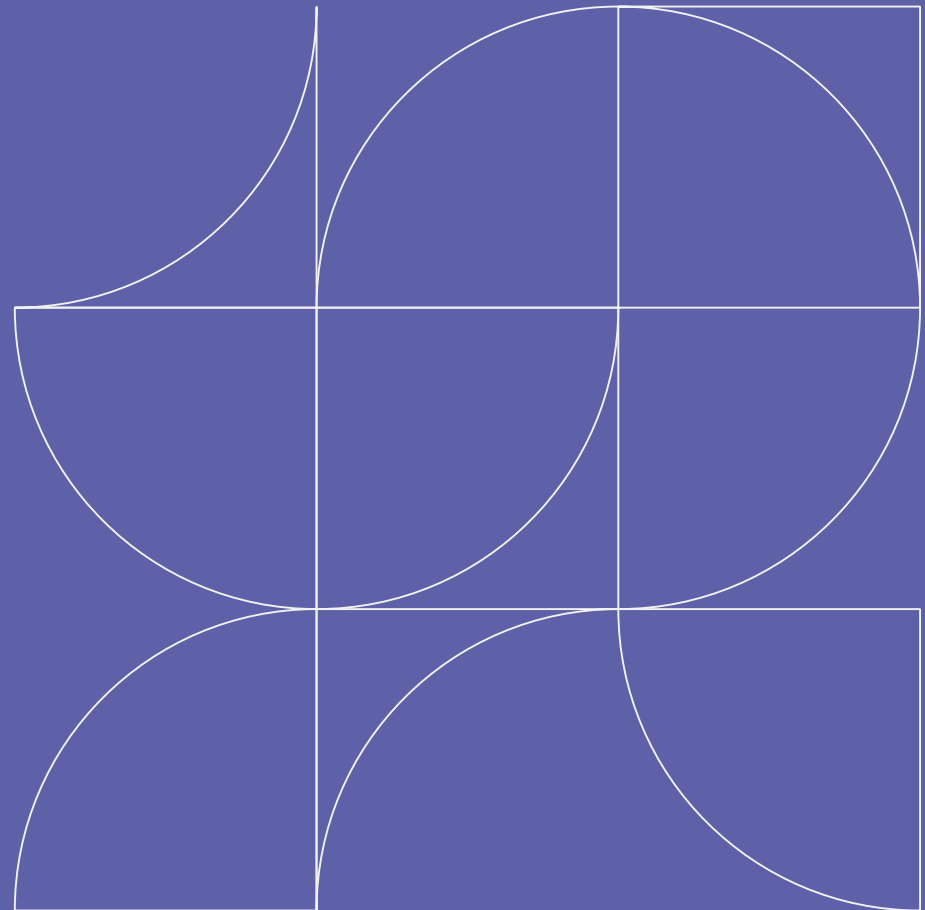


The Trend Towards Pay Transparency Marches On...



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Pay Data Reporting Requirements



California Requires Two Pay Data Reports



- Payroll Employee Report (PER)
 - covers the W-2 workers employed during the selected Snapshot Period
- Labor Contractor Employee Report (LCER)
 - covers the W-2 “labor contractor” workers that performed work for a “client employer” within the client employer’s “usual course of business” during the selected Snapshot Period
 - “Usual course of business” means the regular and customary work of the client employer.
 - “Regular and customary work” means work that is performed on a regular or routine basis that is either part of the client employer’s customary business or necessary for its preservation or maintenance. “Regular and customary work” does not include isolated or one-time tasks.

Timing and Key Changes to CA Pay Data Reporting Requirements



Timing

- Second Wednesday in May
- In 2024, the deadline is May 8th

Remote Worker Reporting Obligation

- Must include information regarding the number of employees per employee group who worked remotely
- Specifically,
 - (1) the number of employees that do not work remotely
 - (2) the number of remote employees located within California
 - (3) the number of remote employees located outside of California.

Labor Contractor Employee Reports

- “Unknown” race, ethnicity or sex of labor contractor employees is no longer permitted
- CRD unlikely to accept or grant any pay reporting submission deferral requests



Illinois: Pay Data Reporting

- Under the law, each “business” (i.e., legal entity FEIN) must obtain an equal pay registration certificate (EPRC) from the Illinois Department of Labor
 - 1) Employee level data showing, W-2 wages and hours; and 2) submit an “equal pay compliance statement”
 - Rolling deadlines – but **first submission is due by March 23, 2024 – with or without an IDOL issued deadline**
 - Recertify compliance every two years thereafter
 - Allows current employees access to anonymized pay data
 - **Data reporting started in 2022; those employers who had 2022 dates will have their next review period coming up in 2024**
-

Equal Pay Compliance Statement: Employers to Certify

- **Statutory Compliance**

- No non-appealable adverse judgements (anti-discrimination laws).

- **Lack of Wage Disparity**

- Average compensation for female and minority employees is not below the average compensation of the business' male and non-minority employees in the same EEO-1 report.

- **No Sex-Based Personnel Decisions**

- Business does not restrict employees of one sex to certain job classifications and makes retention decisions without regard to sex.

- **Wage Disparities Addressed**

- **Frequency of Wage Determinations**

- How often wages and benefits are evaluated to ensure compliance with laws

- **Analysis of Wage Determinations**

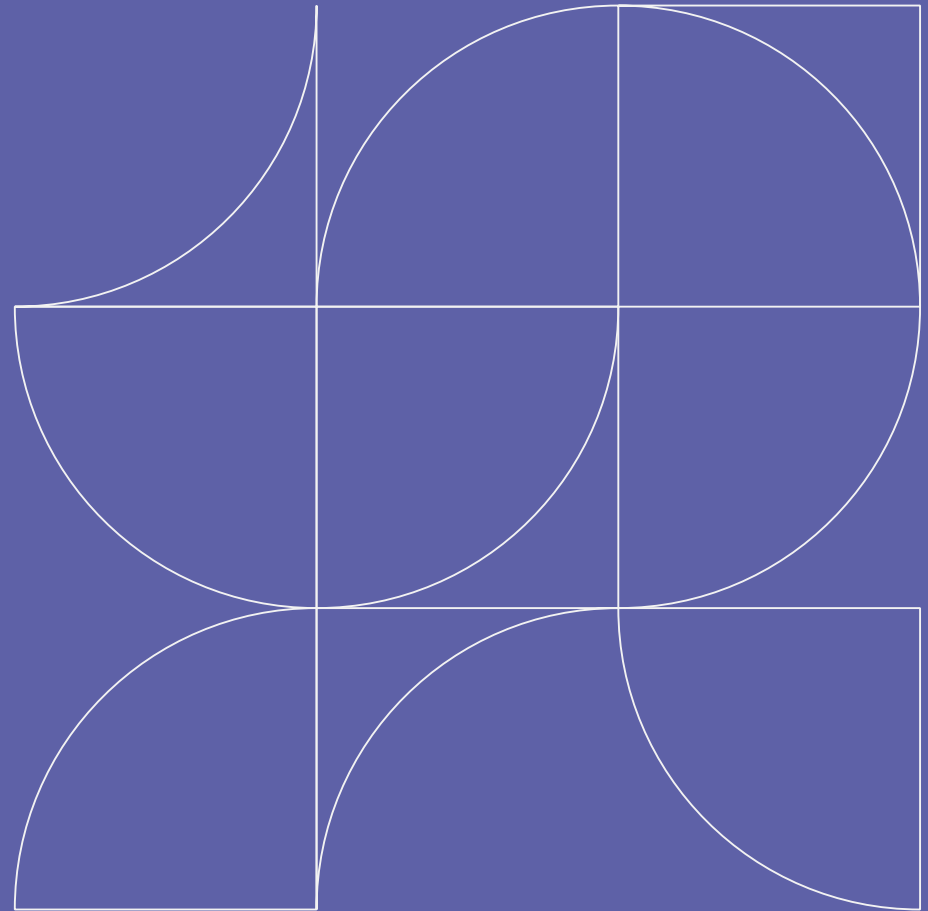
- Provide information regarding the approach the business takes to determine wages for its employees.

******IDOL has developed a template document for use by employers.***

Pending Legislation Requiring Pay Data Reporting

- Several states have pending legislation that would require pay data reporting, including Massachusetts, New York, and Vermont.
- Common trends in the pending legislation include:
 - Annual requirement
 - Minimum employee thresholds
 - MA: 100 or more employees
 - NY: 100 or more employees
 - VT: 10 or more employees
 - EEO-1 style report (not individualized data)
 - publicly accessible in some format, typically aggregated reports

EEOC Pay Data Reporting Update



EEOC Releases “Component 2” Dashboard Data: 2017 & 2018 Pay Data Collection

- **EEOC Conclusion:** In 2018, the national median pay band for men was one pay band higher than the median pay band for women (\$39,000 to \$49,900 compared to \$30,600 to \$38,900), and in 2017, it was two pay bands higher (\$39,000 to \$49,900 compared to \$24,400 to \$30,600).
- **EEOC Conclusion - Race and Ethnicity:** In 2018, in each race and ethnicity category, women were in a lower median pay band than men of the same race or ethnicity, with Black or African American women and American Indian or Alaska Native women in the lowest median pay band of all groups (\$19,200 to \$24,400).
- **EEOC Conclusion - Job Categories:** In 2018, for all but 2 of the 10 job categories, the median pay band for men was higher than the median pay band for women, and for 6 of the job categories, the median pay band for men was two higher than the median pay band for women. Men and women in the job categories of Administrative Support Workers and Service Workers had the same median pay band.
- **EEO1 Component 2 Dashboard**



The dashboards demonstrate “that pay disparities based on sex and race persist in almost every industry both at the national level and in nearly every state.”

EEOC Chair Charlotte A. Burrows



“

Making this aggregated data available to the public shows how pay data collection can shine a light on the problem and potential solutions.”

“The EEOC remains dedicated to using all of our tools to combat pay discrimination and to fulfill the promise of equal opportunity in our nation’s civil rights laws.”

EEOC Chair Charlotte A. Burrows

”

COMING SOON:

Proposed Federal Contractor and Subcontractor Compensation History Ban and Disclosure Rule

- Published on January 30, 2024
- Implements Executive Order 14069, “Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency”
- Applies to:
 - Federal contracts and subcontracts for commercial products or commercial services valued in excess of \$10,000, and to be performed within the United States
 - Positions recruited for and hired into that will perform work on or in connection with a federal contract or subcontract
- Comments are due by April 1, 2024

Key Components of Proposed Rule

Compensation History Ban

Pay Range Disclosure

Applicant Notice Provision

Contractual Flow Down
Obligations

Complaint Process

Compensation History Ban

- Federal Contractors would be prohibited from:
 1. Seeking an applicant's compensation history from any person, including a current or former employer or through an agent
 2. Requiring disclosure as a condition of an applicant's candidacy
 3. Relying on an applicant's compensation history to determine compensation for the applicant at any stage in the selection process
 4. Retaliating against or refusing to interview, consider, hire, or employ any applicant failing to respond to compensation history inquiry



Pay Range Disclosure Requirements for Job Advertisements

- Disclose compensation to be offered for positions working on or in connection with a federal contract in job advertisements
- Disclosures must include:
 1. the salary or wages (or range) the contractor in good faith believes that it will pay for the advertised position, AND
 2. a general description of the benefits and other forms of compensation applicable to the job opportunity
- “Compensation” defined broadly
- Contractors may use (1) the contractor’s pay scale for that position, (2) the range of compensation for those currently working in similar jobs, or (3) the amount budgeted for the position when setting salary/wage range



Notice to Applicants

- Must provide written notice to covered applicants
- Must be part of the job announcement or application process and include specific language
 - Prescribed language contained in required contract clause provisions
- Notice includes the prohibitions and requirements under the proposed rule, and provides details on how to file a complaint for noncompliance,
 - also includes how to file a discrimination complaint with the OFCCP



Contract Flow Down Obligations

- The contract clause details all of proposed rule's requirements and prohibitions including:
 - the compensation history ban and compensation disclosure requirement
 - applicant notice
 - contract clause flow down requirements
- Contractors will be required to “include the substance” of the contract clause in all solicitations and contracts



Complaint Process

- Proposed rule also provides for an applicant complaint process whereby an applicant can allege compliance violations
- Applicants may submit a complaint to the contracting agency point of contact
- Must be submitted within 180 days of the date the alleged violation occurred
- Applicants alleging discrimination prohibited by Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and VEVRAA would continue to submit complaints directly to the OFCCP





Global Landscape Outside the US



Trends We're Seeing



Public disclosure requirements



Regional



Training and data collection



Stakeholder interests

Global Trends in Pay Reporting



- Bulk of legislation in Europe, but other regions anticipated to catch up, particularly with the enactment of the EU Pay Transparency Directive
- With passage of legislation in Brazil, anticipate other LatAm countries may follow suit

- **North America**

- US (CA, IL)
- Canada (BC, ON, QC)

- **LatAm**

- Brazil
- Ecuador

- **APAC**

- Japan
- Australia

- **EMEA**

- Austria
- Belgium
- Denmark
- Finland
- France
- Germany
- Ireland
- Israel
- Italy
- Lithuania
- Luxembourg
- Norway
- Portugal
- South Africa
- Spain
- Sweden
- Switzerland
- UK

EU Pay Transparency Directive



Scope

- Applicable to EU member countries

Obligation

- The Directive itself does not impose reporting obligations. Obligations framed under the Directive are to be established through laws adopted by individual EU member countries

Timing

- By June 7, 2026

Impact

- EU member countries are anticipated to enact national laws are at least as favorable to workers as the Directive's provisions.

EU Pay Transparency Directive



Highlights

- Job applicants and access to pay information
- Workers rights to obtain pay information
- Employer reporting obligations
- Reporting period will be based on the number of workers:
 - 250 or more workers: first report by June 7, 2027 (relating to 2026 data); subsequent reports annually thereafter
 - 150 to 249 workers: first report by June 7, 2027; subsequent reports every three years thereafter
 - 100 to 149 workers: first report by June 7, 2031 (relating to 2030 data); subsequent reports every three years thereafter.
 - Fewer than 100 workers: no reporting requirement under the Directive, although they may voluntarily report and member states may require under the local implementing law
- Potential for joint pay assessments with employer representative bodies

EU Pay Transparency Directive



What Should Employers Be Doing Now To Prepare?

- Assess headcount in EU member countries to determine whether reporting requirements will apply
- Determine expected obligations based on local presence and headcount
- Consider internal budgets for future analysis and reporting
- Monitor enactment of local legislation
- Where legislation has already been enacted:
 - Determine current timing and scope of current obligations
 - Conduct analysis based on required data points
 - Ensure compliance with existing obligations

Global Pay Equity Reporting Requirement Examples

Country	Overview of Requirement
UK	Employers with 250 or more employees must report their gender pay gap figures annually. Published on government website and on employer's own website for the public to view.
France	Employers with at least 50 employees are required to calculate and publish a professional equality index to measure the pay gap between women and men. The result must be published annually, on the company's website.
Spain	Depending on company size, employers are or will become obliged to prepare an Equality Plan. All companies must also have a salary record with gender-disaggregated data and companies with 50+ employees must carry out a salary audit as part of the Equality Plan.
Germany	Employers with more than 500 employees, and which are obliged to provide a management report pursuant to the German Commercial Act, are required to include a detailed report on equality and equal pay every three/five years. Published in the Federal Gazette.
Italy	Employers with over 50 employees are required to provide a report at least every two years, containing information on male and female employee remuneration. The report must be shared with union representatives and the government.
Australia	Private sector employers with 100 or more employees are required to lodge reports in relation to various gender equality targets to the Workplace Gender Equality Agency.
Quebec & British Columbia	In Quebec employers with 10 or more employees must conduct a pay equity exercise that is shared with employees and file an annual pay equity declaration, and in BC companies will have to report the pay transparency report in a publicly available website.

Strategies for Global Compliance



Achieving Global Compliance

- Internal tracking
 - headcount
 - jurisdictions with reporting obligations where the company does business
- Understanding the obligations
 - what to track and report
 - timing of obligations
 - internal vs. external reporting and to whom does report get submitted
 - affirmative reporting or does government compile
 - understand obligations to consult with employee representatives

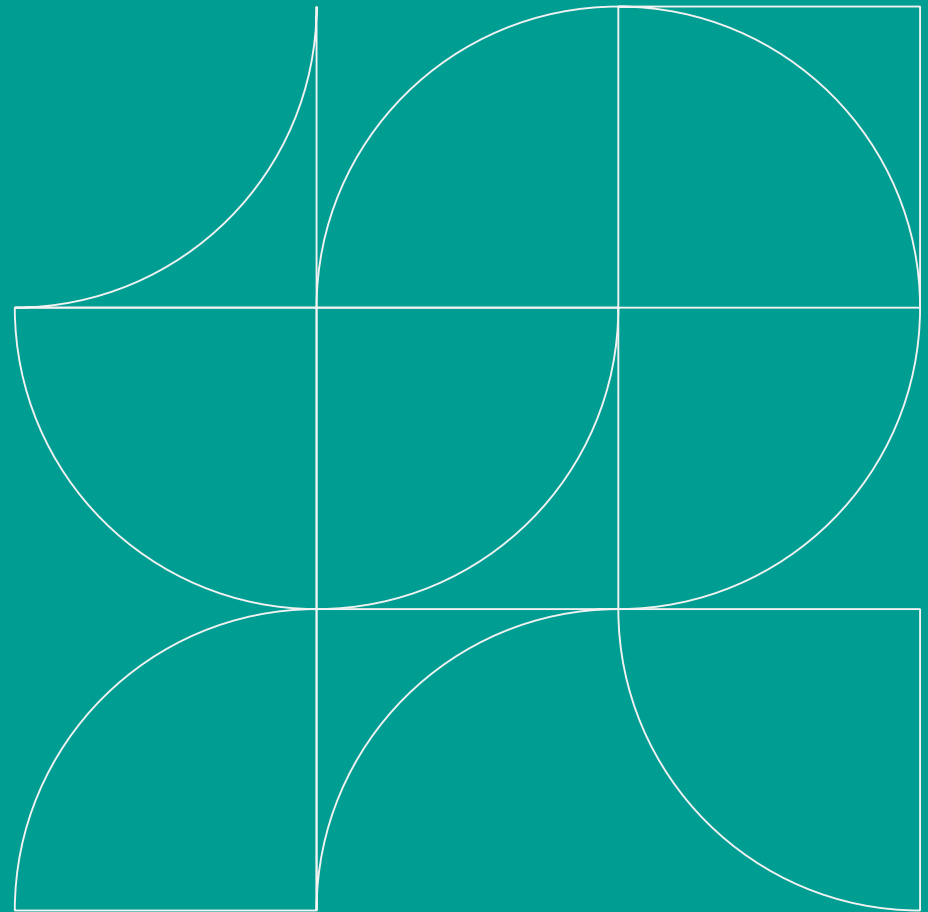


Defining Comparable or Similarly Situated Work

“Equal” work vs.
“Substantially
Similar”
or
“Comparable” Work

- US Federal Equal Pay Act prohibits an employer from discriminating on the basis of pay “**equal work** on jobs the performance of which requires **equal skill, effort, and responsibility**, and which are performed under similar working conditions”
- State-level legislation in California, New York, Illinois, and other states use a “substantially similar” standard rather than an “equal work” standard
 - California Fair Pay Act: “An employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for **substantially similar work**, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions”
- EU Pay Transparency: Pay structures shall be such as to enable the assessment of whether workers are in a comparable situation... They shall include skills, effort, responsibility and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position. ... In particular, relevant soft skills shall not be undervalued.

CLE Code





Proactive Strategies



Best Practices

- Design a Comprehensive Compensation Structure and Philosophy
 - Refine pay ranges
 - Geographic pay differentials
 - How will prior experience factor into compensation strategy
 - Performance
 - Market Considerations
 - Establish, maintain effective job structure
 - Define and share how the company sets salary at various stages
 - Starting pay philosophy
 - Promotional increases
 - Departmental transfers
-



Best Practices (Cont'd)

- Conduct regular, proactive attorney-client privileged assessments
 - Test your job architecture and compensation strategy
 - If necessary, implement adjustments to pay
 - Reassess practices that lead to unexplained pay differences
 - Implement interim methods to review compensation
 - Assess peer equity at hire and promotion
 - Compa ratios
 - Merit Increases
 - Evaluate strategy to address and correct compression
 - Focus on closing the “data” gap
 - Capture the data related to the factors that explain pay differences
-



Pay Transparency Practices

- Partner with key stakeholders to develop a **comprehensive strategy**
 - National vs state-by-state approach?
 - Guiding principles/governance: who will provide pay ranges
 - Consider providing greater transparency regarding how comp is set at organization
 - Determine **ranges for each jurisdiction**
 - Employees above/below range?
 - Consider how to post geographic differentials
 - Full range vs. posted range?
 - Balance the legal requirements and the “optics”
 - Develop **language** to be used on postings, offer letters, etc...
 - Consider whether to be more expansive than required based on talent acquisition needs; consider disclaimers (e.g., posted range applies to the current posting)
-




Pay Transparency Practices

- Consider how to address **questions** from employees in jurisdictions that do not have pay transparency requirements
 - **Beyond legal:** these are *practical/business considerations*
 - Develop strategy responding to **questions** from current employees about position on range
 - **Train** key personnel and operationalize process
 - Talking or FAQs points for leaders and employees
 - Templates/scripts for responding to applicant/employee requests
 - Continue to **monitor** pay transparency laws and **trends nationwide**
-

Documentation, Data, & Consistent Application in Processes is Key for Proving Any Affirmative Defense


- Robust, contemporaneous documentation is often the most critical factor in determining the applicability of any affirmative defense.
- If employers choose to justify a pay disparity based on a seniority or merit system, or on a system that bases pay on the quantity or quality of output, they must be careful that those systems are well documented and communicated to employees.
- A system that appears ad hoc or that is inconsistently applied risks being met with skepticism by a court
 - *Brunarski v. Miami Univ.*, No. 1:16-cv-311, 2018 WL 618458 (S.D. Ohio Jan. 26, 2018)
 - *Tourangeau v. Nappi Distribs.*, No. 2:20-cv-00012-JAW, 2022 WL 17987103 (D. Me. Dec. 29, 2022)

Available Today - Four New Resources


 **Seyfarth**

50 State Equal Pay Reference Guide

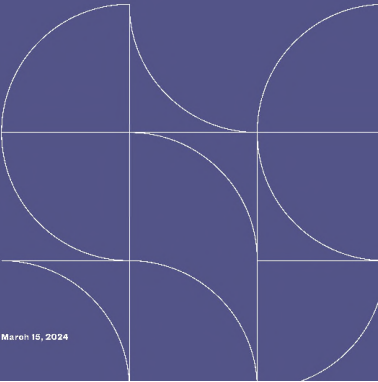
What Employers Need to Know about US Equal Pay Laws




2024 Q1 Edition

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Pay Transparency Wage Range Disclosure Compendium




Updated as of March 15, 2024


 **Seyfarth**

Developments in Equal Pay Litigation

2024 UPDATE




By Matthew J. Caprice and the Seyfarth Pay Equity Group

 **Seyfarth**

Global Pay Equity Desktop Reference

Pay Equity Reporting Laws Around the World



March 2024

The image features a solid teal background. On the left side, there is a white geometric design consisting of a vertical line, a horizontal line, and two curved lines that meet at the intersection of the vertical and horizontal lines, forming a shape reminiscent of a stylized 'S' or a pair of opposing curves. The text 'Thank You' is positioned on the right side of the image.

Thank You