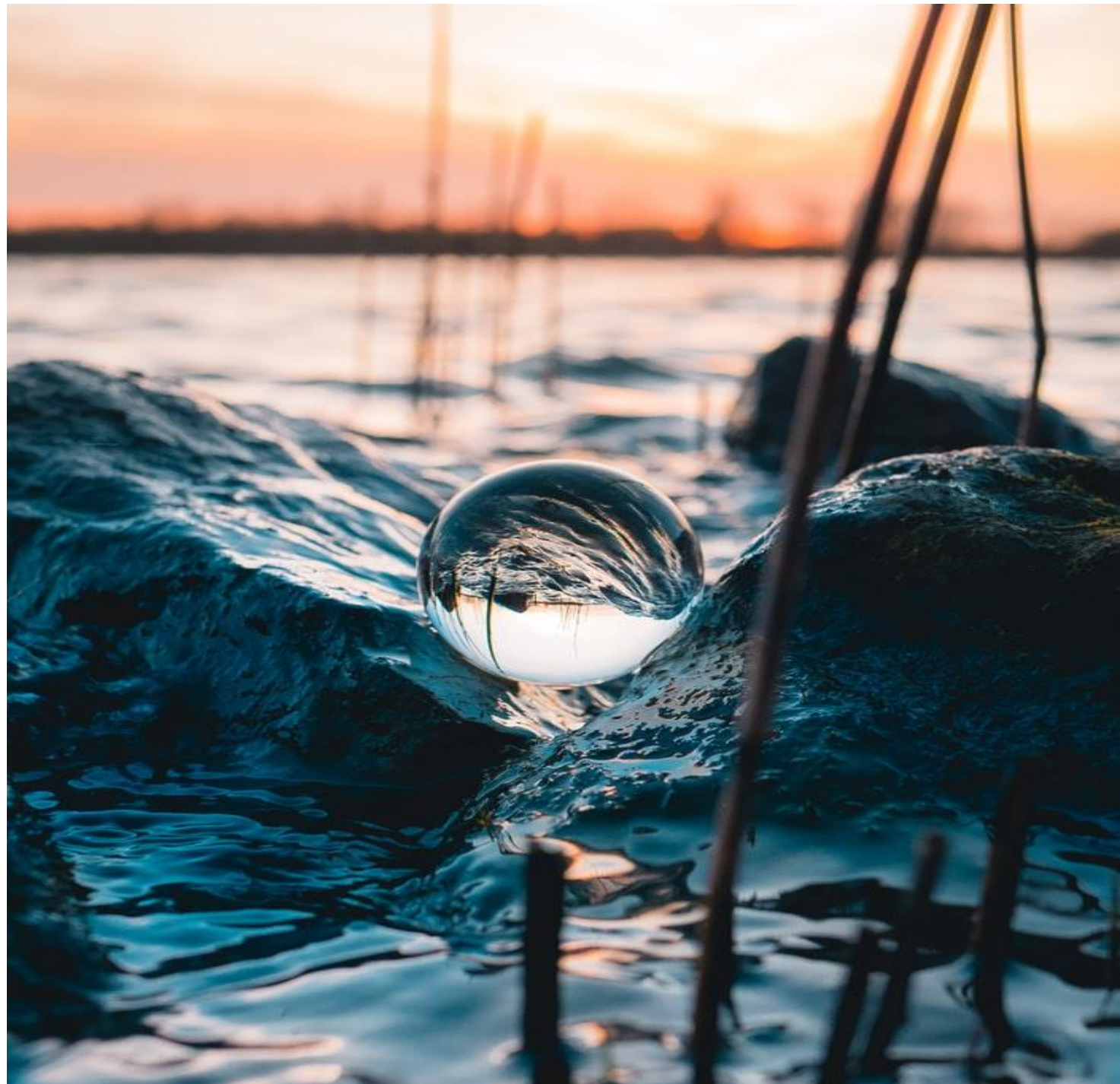


Equal Pay Day 2021: U.S. and Global Outlooks and Trends

March 24, 2021

Seyfarth Shaw LLP

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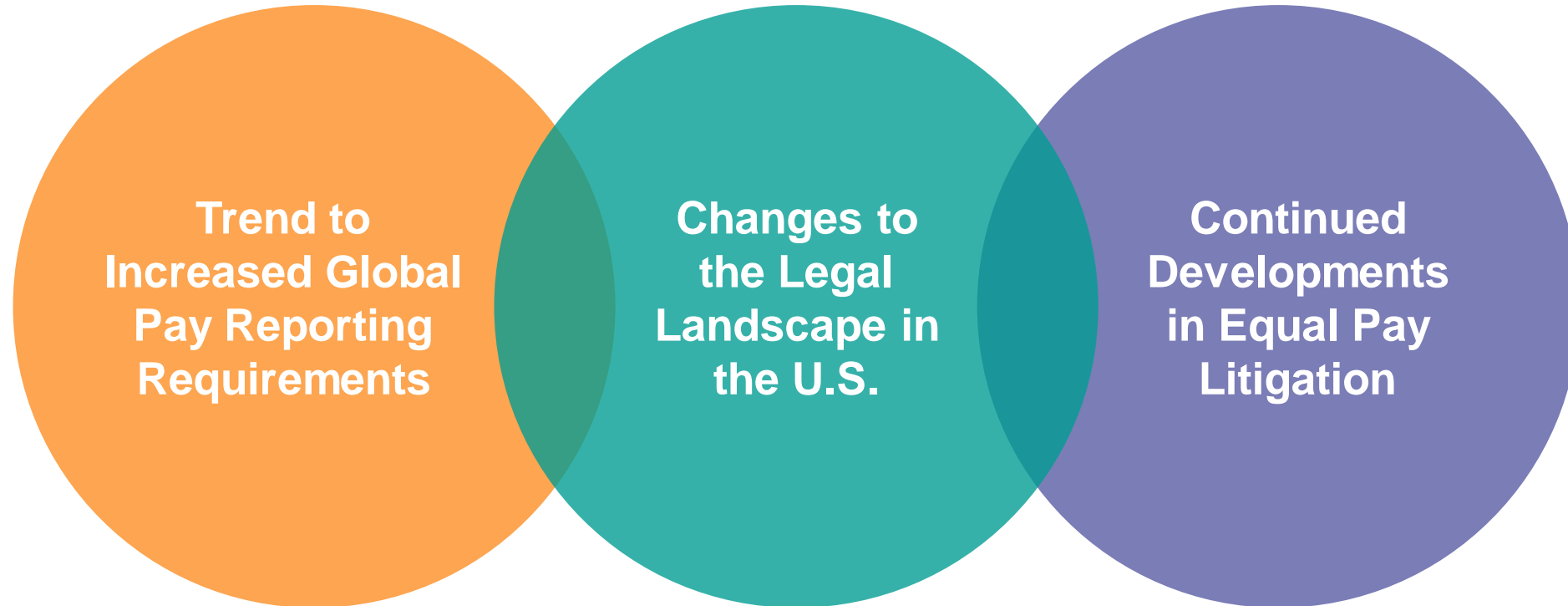


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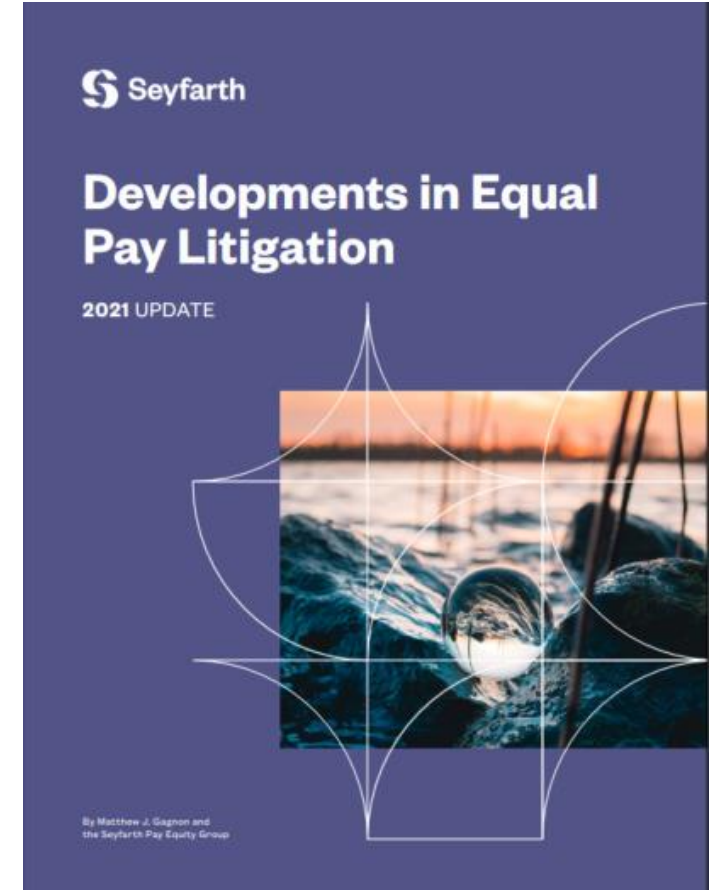
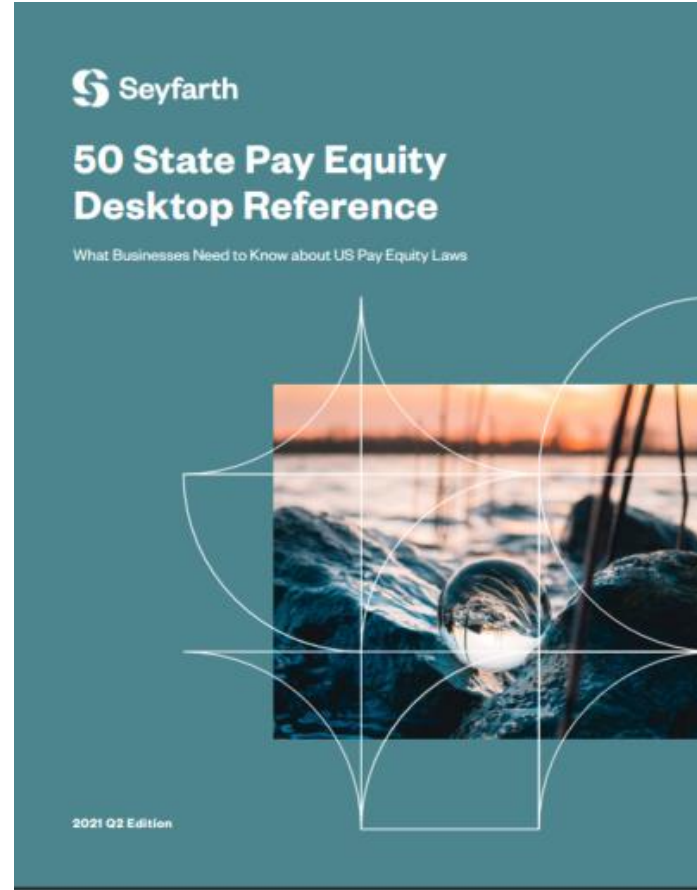
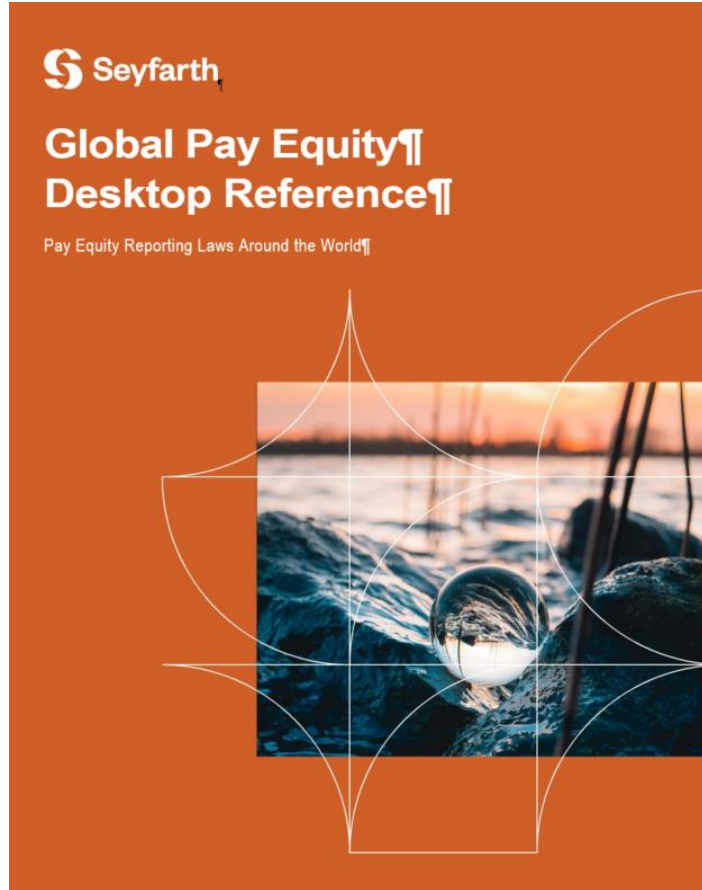


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What We See in 2021 and Beyond . . .

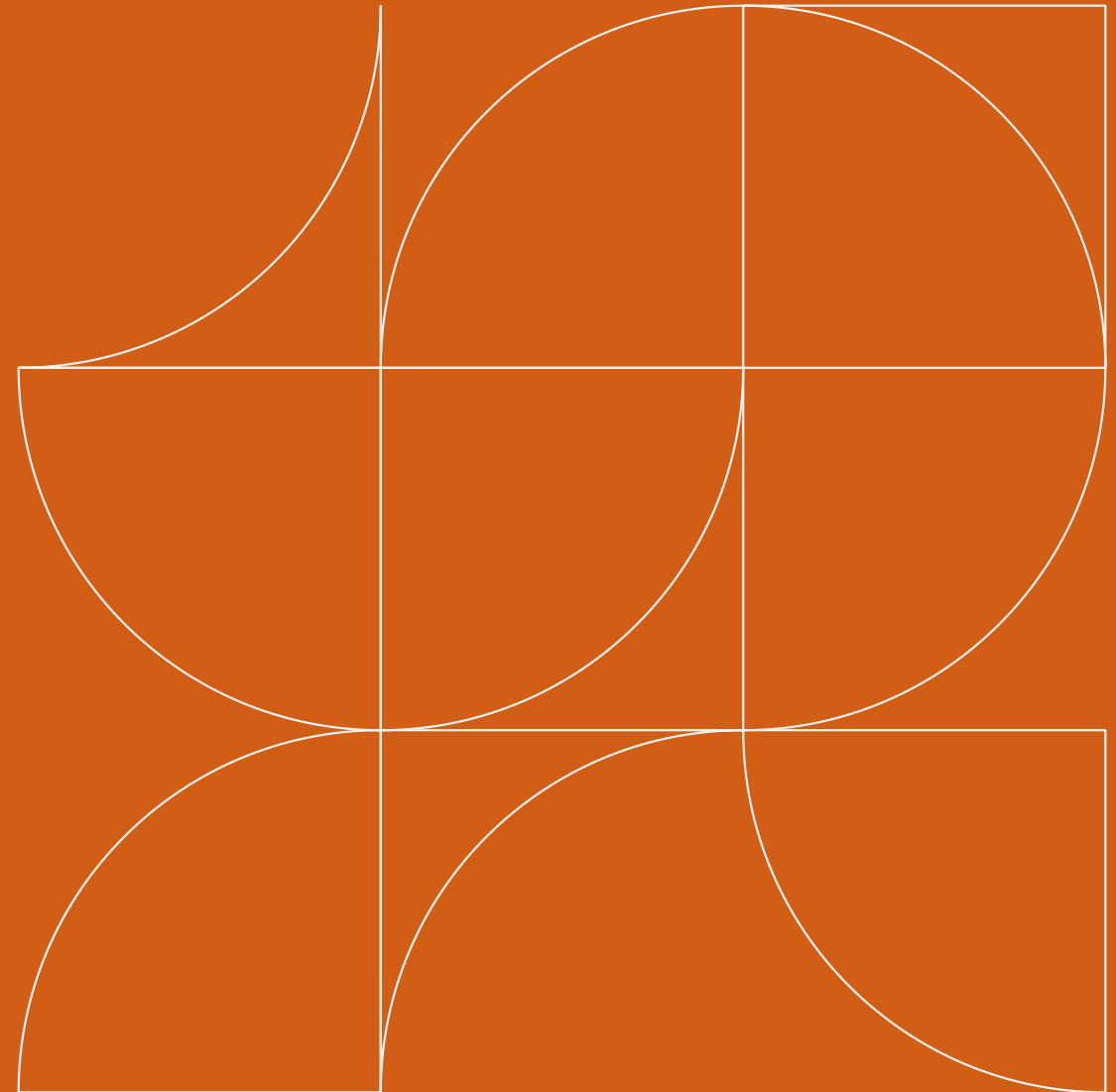


Available Today - Three New Resources



Global Pay Reporting Requirements

Marjorie Culver and Jeremy Corapi



Seyfarth's International Employment Law Team

YOUR SPEAKERS

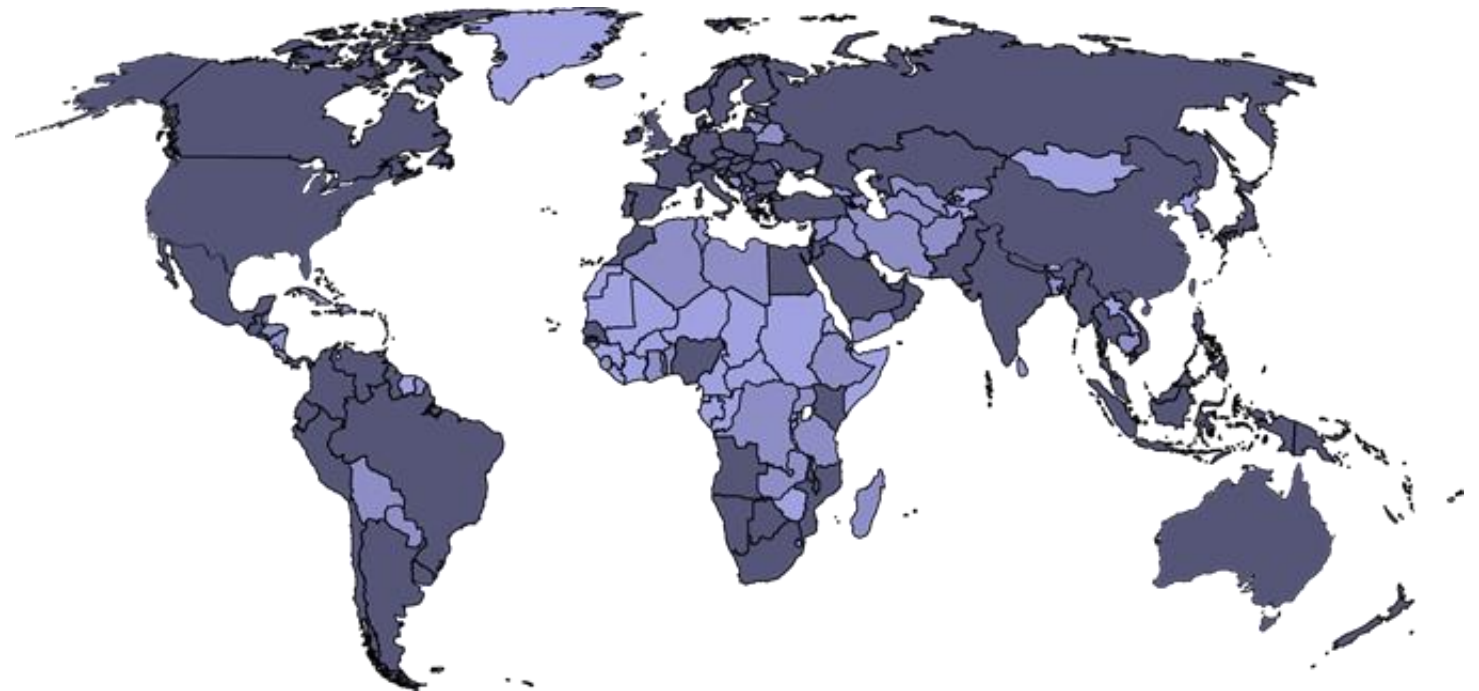




Marjorie Culver
New York



Jeremy Corapi
New York

Seyfarth's International Employment Law practice has experience covering more than 150 countries, acting for some of the world's largest multinational companies on a global, regional, and local basis.



-  Countries we have assisted clients in during the last 12 months
-  Countries we have assisted clients in previously



Trends We're Seeing



Public disclosure requirements



Regional



COVID-19



Training and data collection



Stakeholder interests

33%

Seyfarth conducted a global survey of pay reporting laws and found that there are pay equity reporting laws in 21 of 64 countries that often serve as key employment hubs

Global Pay Equity Reporting Requirement Examples

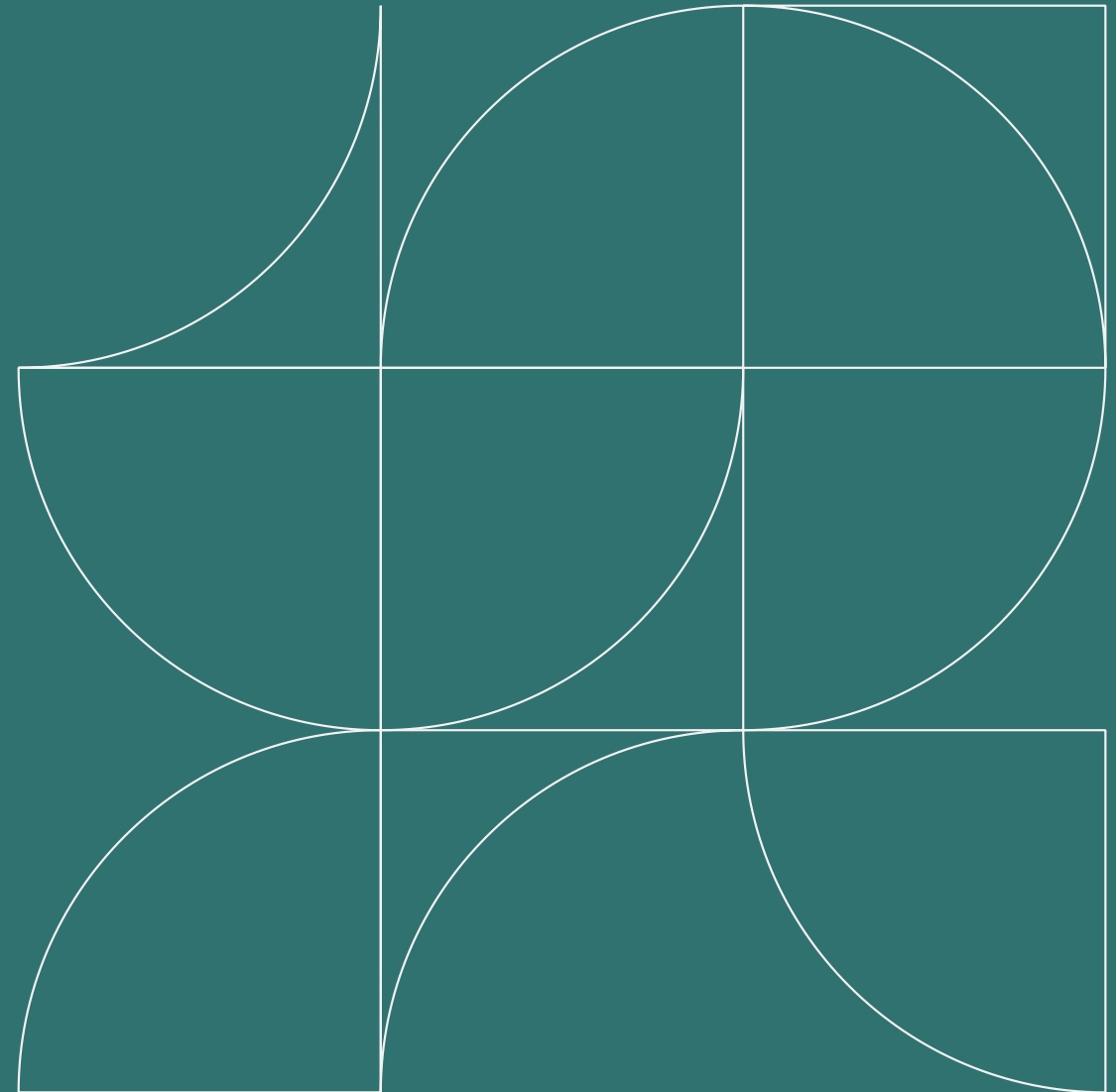
Country	Overview of Requirement
UK	Employers with 250 or more employees must report their gender pay gap figures annually. Published on government website and on employer's own website for the public to view.
France	Employers with at least 50 employees are required to calculate and publish a professional 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. As of April 14, 2021, all companies must also have a salary record with gender-disaggregated data and companies with 150+ employees must carry out a salary audit as part of the Equality Plan (progressively, companies of 50+ employees will also be included).
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 100 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	Employers with 10 or more employees must conduct a pay equity exercise that is shared with employees and file an annual pay equity declaration.



The EU Commission Pay Transparency Directive

- Proposed directive would:
 - Require all EU employers to take various measures to help foster gender pay equity
 - Give employees and candidates the right to comparative pay information
 - Require public gender pay gap reporting for companies with 250+ employees
- If adopted:
 - Will apply to the EU's 27 member states
 - Unlikely to come into force before 2024

Major Changes to the Pay Equity Landscape the U.S.



Changes to the U.S. Legal Landscape for 2021

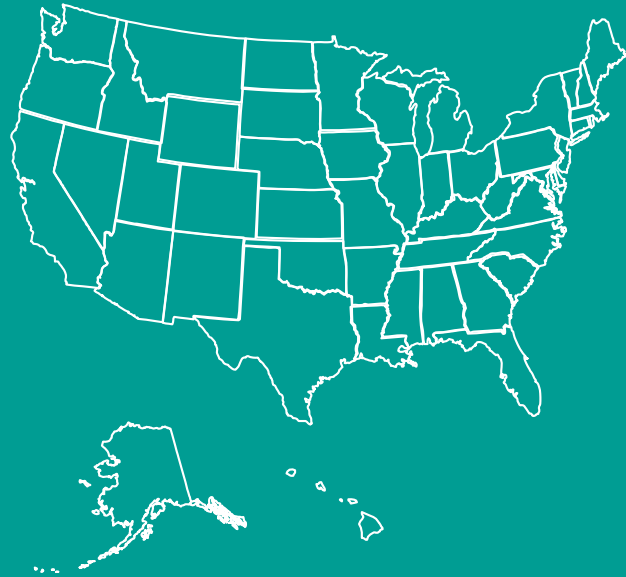
Three law pay equity trends to watch for 2021:

- 1 | Pay Scale Disclosure Requirements
- 2 | More Reporting in the U.S.
- 3 | Federal Action on Equal Pay



Pay Scale Disclosure Requirements

Trend #1



Impacted Jurisdictions:

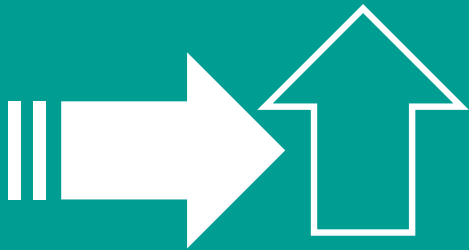
- California
- Colorado (far-reaching implications)
- Maryland
- Ohio (Toledo and Cincinnati)
- Washington State

Summary of Pay Scale Disclosure Laws

	To Whom?	Timing	What Must be Provided
California	Applicants	Upon reasonable request, made after an applicant has completed an initial interview with the employer	A salary or hourly wage range
Colorado	Applicants + Employees	On job posting	(1) The hourly rate or salary compensation (or a range thereof) that the employer is offering for the position; (2) general description of any bonuses, commissions, or other forms of compensation that are being offered for the job; and (3) a general description of all employment benefits the employer is offering for the position
Maryland	Applicants	Upon request	Wage range
Toledo, OH and Cincinnati, OH	Applicants	Upon reasonable request, after a condition offer of employment	Pay scale
Washington State	Applicants + Employees	Upon request after initial offer	Wage scale or salary range

Trend #2

Push Toward Greater
Transparency



Pay Reporting the U.S.

There are calls for greater **transparency** around pay equity and pay equity in the U.S. as well

- California
- Illinois
- Federal pay report?

CA Pay Data Report



- California's Pay Data Report collection is underway
 - Reports are due by March 31
 - Deferral available gives employers until April 30
- Employers Subject to EEO-1 Filing Obligation w/ 100 Employees and **ANY** employees working in or reporting to California
- Similar to the EEO-1 Component 2 Report, but with a few key differences
 - W-2 Box 5
 - Hours paid even if not worked
 - Separate reports for each legal entity
- More information about CA Pay Data Reporting is available at: <https://www.dfeh.ca.gov/paydatareporting/>

Illinois

“Equal Pay
Registration Certificate”



- Brand new as of YESTERDAY, coming in 2023
 - Companies with more than 100 employees to submit pay equity reports
 - Certify compliance with pay equity laws
 - File EEO-1 reports with the state, which will be publically released

*The state will audit compliance with this requirement and noncompliance can result in **civil penalties “in an amount equal to 1% of the business’s gross profits.”***

Trend #3

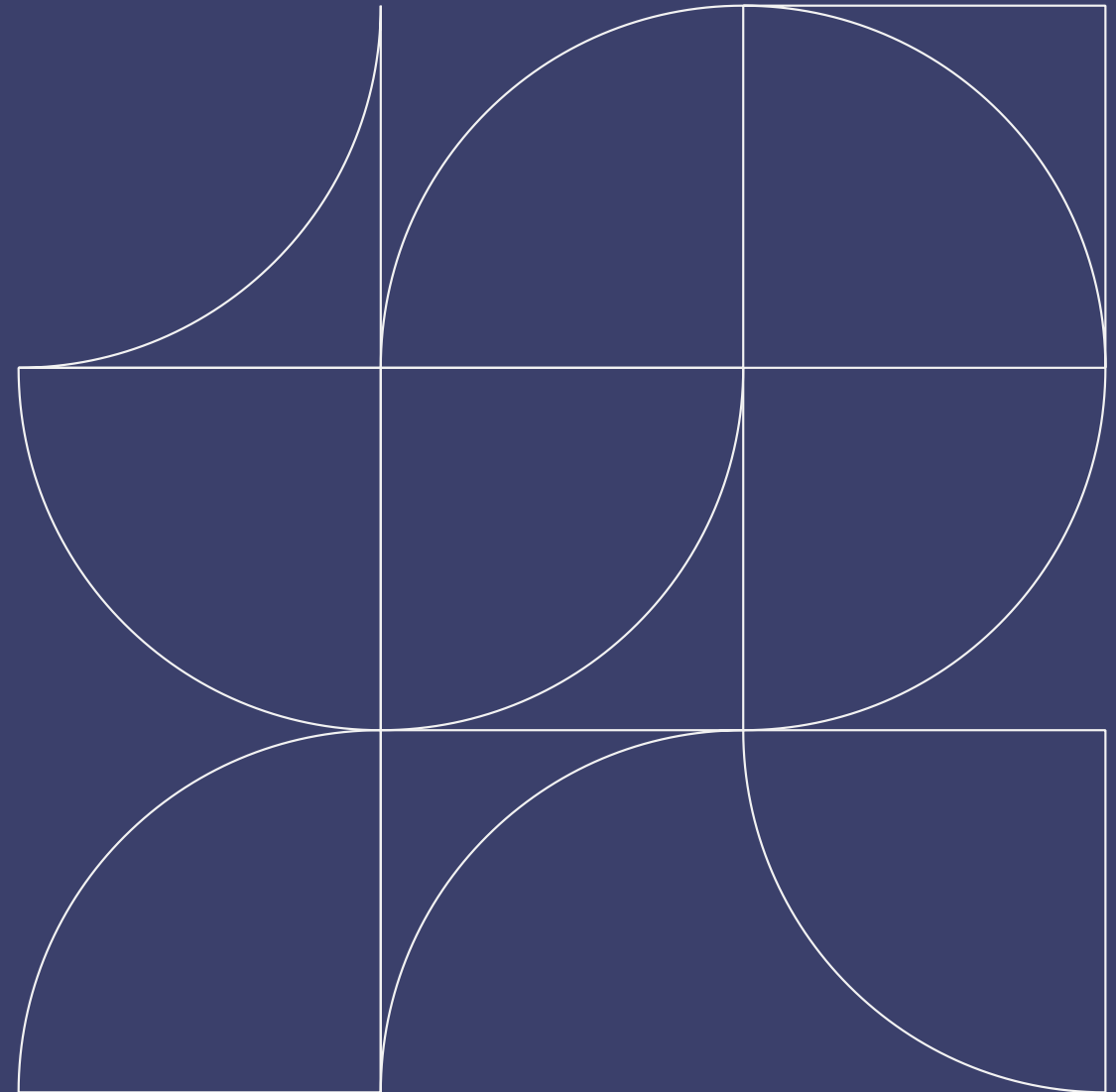
Action at the Federal Level



What is happening at the federal level?

- We expect that pay equity laws and enforcement will accelerate in the Biden Administration.
- Our partner, Camille Olson, recently testified before the U.S. House of Representatives Education & Labor Committee; Workforce Protections Subcommittee on H.R. 7, the “Paycheck Fairness Act.”
- A substitute “Paycheck Fairness Act” is being re-introduced today.
- We will keep you informed as these major developments continue.

Developments in Equal Pay Litigation



Litigation Trends in the U.S.

Litigation Trends in the U.S.

- We still see and have seen an increase in litigation under the federal Equal Pay Act and analogous state laws with noticeable focus on state law claims proving that wage disparity has been a big issue this year.
- Similarly, pay transparency raises questions about how to value or compare different compensation schemes for various positions when factoring in benefits, bonuses, commissions and other forms of compensation



Federal Equal Pay Laws:

Understanding The Different Statutory Schemes

Equal Pay Act

- No “intent” requirement
- Burden shifting framework
- Four enumerated affirmative defenses
- Statute of limitations and other procedural mechanisms come from the Fair Labor Standards Act

Title VII

- Disparate treatment vs. disparate impact
- Slightly different burden shifting framework
- Plaintiffs are required to exhaust administrative remedies
- Different statutes of limitations and procedural mechanisms



Key Trends - Proving The Prima Facie Case

- Establishing a **wage disparity**
 - What counts as compensation? What counts as *more* compensation?
 - The role of statistics
- Identifying one or more **comparators**
 - Choosing the right “establishment”
 - Just one comparator is often sufficient, but some courts look to see if other members of opposite gender paid more
- Showing “**equal work**”
 - Often depends on employer’s industry and employee’s position
 - Relying on proxies to show that work is equal



Other Issues Impacting Equal Pay Litigation

- **Retaliation claims**
 - Often comes down to causation
 - And causation often comes down to timing
- **Arbitration**
 - Careful drafting is key
 - Gateway issues for the court or the arbitrator?
- **Complex employment relationships**
 - EPA claims are decided under the FLSA joint-employer standard
 - Title VII standard is slightly different

Questions?

For more information please contact Annette Tyman, Christine Hendrickson, or any member of Seyfarth's Pay Equity Group or visit:

<https://www.seyfarth.com/services/practices/advisory/employment/pay-equity.html>

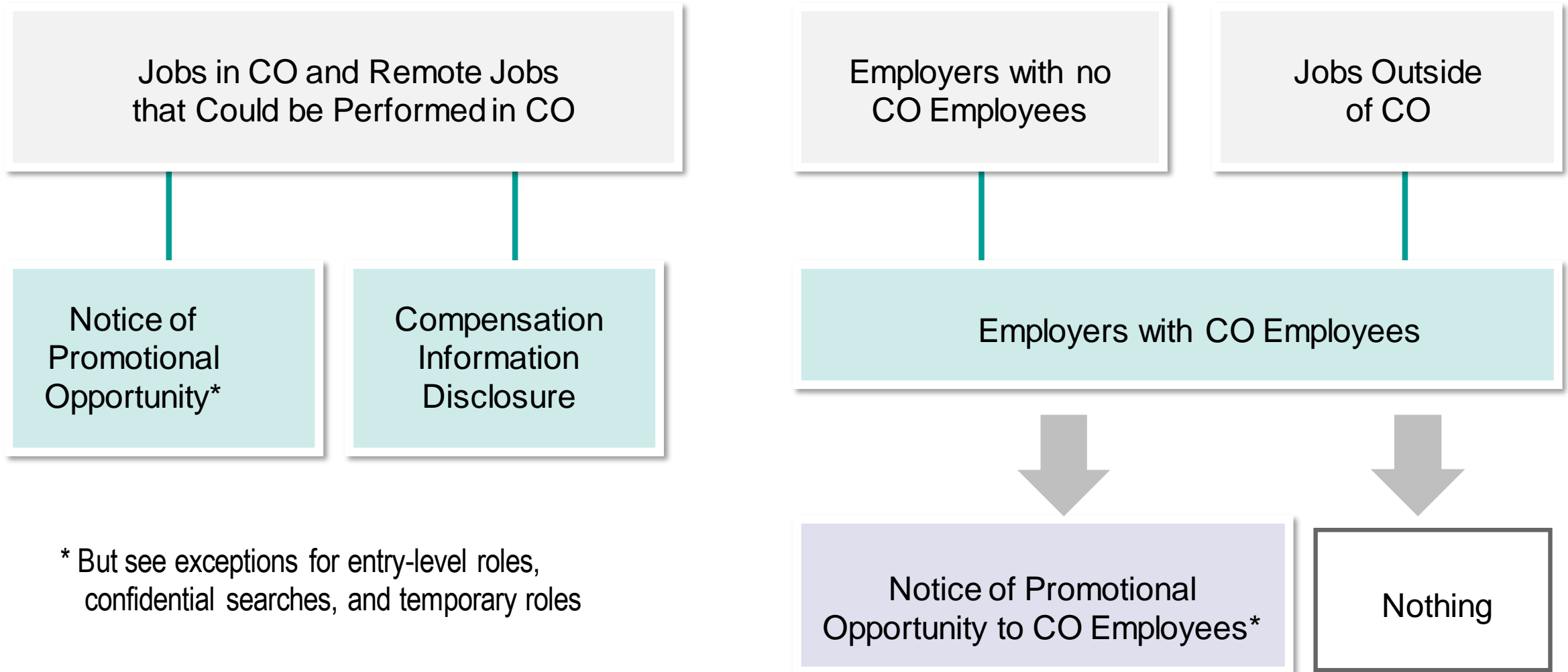
Global Capabilities in Pay Equity



We, in conjunction with our partner firms across the globe, handle all aspects of pay equity issues. Our international work includes, but is not limited to:

- Conducting assessments of compensation within the framework of legal privilege
- Crafting appropriate remedial measures to mitigate future risks that we/our client's have identified
- Conducting high-profile investigations related to complaints of pay discrimination in the relevant jurisdiction where issues have arisen
- When necessary, bringing our, and our partner firms', unique experience to defend multi-national employers in pay equity disputes
- Advising on legal obligations regarding Pay equity programs, equal pay registry and equal pay audits, though EMEA including analysis of reporting obligations, registration requirements and Works Council involvement;
- In particular, advising international corporations in the newly approved obligation to implement an equal pay registry in Spain as well as Equality Plan and Pay Audit in Spain

What Needs to be Disclosed in Colorado?



* But see exceptions for entry-level roles, confidential searches, and temporary roles