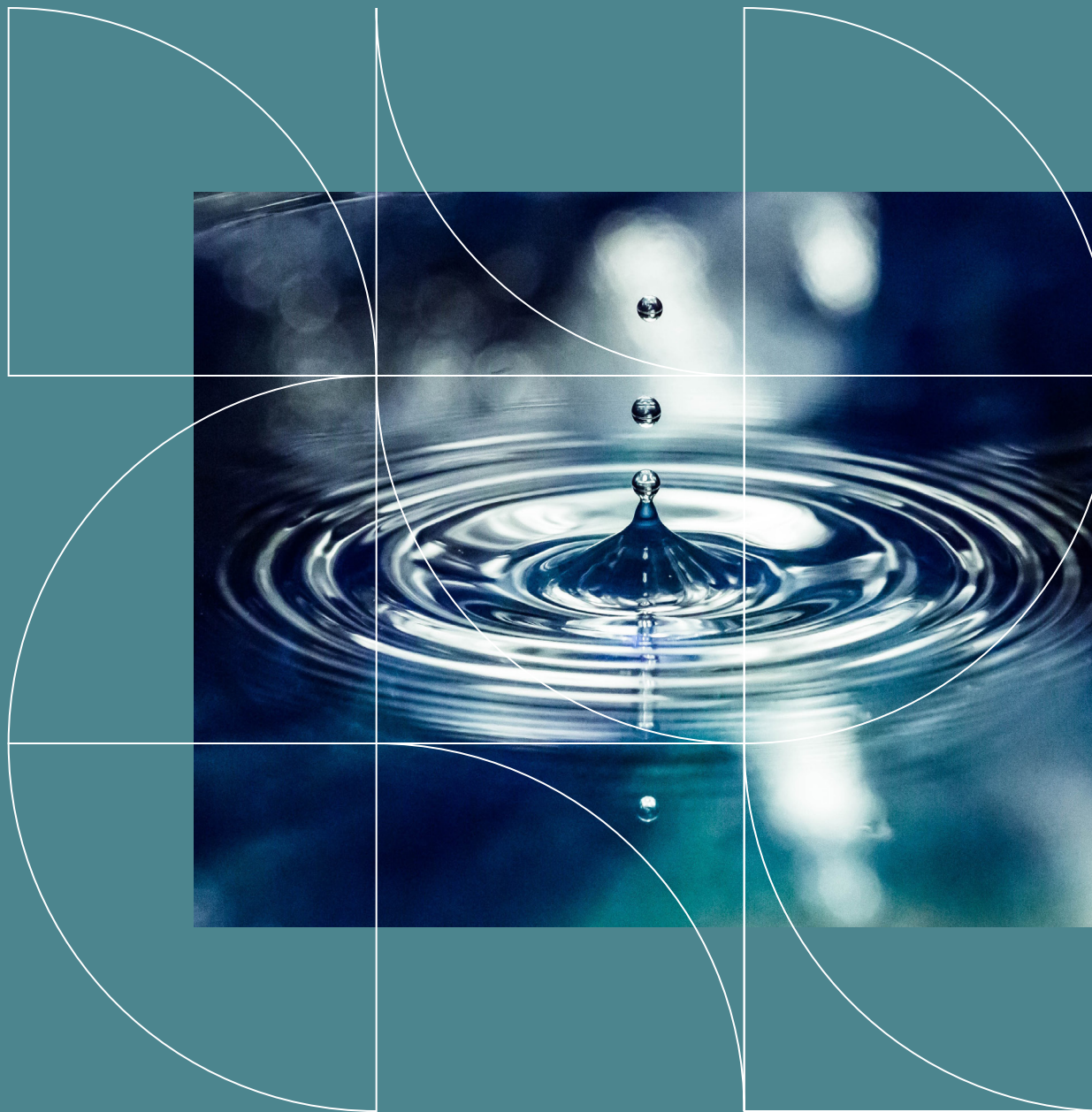




50 State Pay Equity Desktop Reference

What Businesses Need to Know about Pay Equity Laws



2020 Q4 Edition

Dear Clients and Friends,

For organizations that operate in multiple states, tracking the ever-changing requirements related to pay equity can pose daunting challenges, and the growing “ripple effect” of such requirements is being felt across industries and sectors. To simplify the process, we are pleased to provide you with our *Fourth Annual 50 State Pay Equity Desktop Reference: What Employers Need to Know about Pay Equity Laws*.

This one-stop desk reference provides answers to these five common questions:

- Which protected classes are protected by the Equal Pay laws?
- What type of work must be compared?
- What are the permissible factors to explain pay differences?
- Is reliance on geographic location to explain pay differences permitted?
- May employers ask about salary history?

This guide addresses laws that impact private employers and is based on review of state Equal Pay Acts and statewide salary history bans. The guide also provides more information about undertaking a proactive equity audit and the lifecycle of such an audit. The information contained in the booklet is purposely condensed and simplified; while it provides a convenient point of reference, always consult with your attorney before making any decisions as the law is constantly changing.

In addition to this desktop reference, Seyfarth at Work, in association with Seyfarth Shaw’s Pay Equity group, offers a more comprehensive pay equity survey, which is updated quarterly.

That survey covers:

- Citations to current statutes
- Citations to pending amendments/bills
- Protected class(es)
- Type of work compared
- Permissible factors for pay differential
- Reliance on geographic location to explain difference permitted
- Wage transparency protections
- Salary history inquiries permitted (including additional information about cities, counties, and territories with salary history bans)
- Information about Fair Employment Practice Laws that prohibit compensation discrimination
- Comments or other notable differences from federal law

For additional information, please email payequity@seyfarth.com.

We hope this booklet proves a useful and informative tool. It does not constitute legal advice or create an attorney-client relationship. Please do not hesitate to contact payequity@seyfarth.com if you have any questions.

Expanding Influence of Pay Equity

Since 1963, the Equal Pay Act has prohibited pay discrimination on the basis of sex. Since that time, there has been a wave of shareholder initiatives and modifications to state pay equity laws. The ripple effect has been far reaching. In 2020 and beyond, we see more litigation and enhanced global pay reporting laws.

FEDERAL LAW

1963

The Equal Pay Act of 1963 was signed into law, followed by Title VII in 1964. The EPA prohibits pay discrimination on the basis of sex.

STATE LAWS

2016

Pay equity laws at the state level boomed in 2016. California, New York, and Massachusetts led the charge, and became the first states to adopt more onerous pay equity laws. Other states followed suit and many also enacted salary history bans and pay scale disclosures.

GLOBAL

2020

and Beyond

The legal landscape continues to rapidly change, as more countries around the globe enact pay equity reporting laws.

SHAREHOLDER INITIATIVES

2015

Amidst a wave of activism, including from high profile figures and celebrities, 2015 saw the emergence of shareholder initiatives asking companies to disclose pay differences between men and women.

LITIGATION

2018-2020

In the last two years alone, over 300 pay discrimination cases were filed. This number is projected to go up.

Life Cycle of a Pay Equity Audit

Is your organization considering undertaking a proactive pay equity analysis? Changes to state and federal laws in the US and globally make undertaking such an analysis a wise decision and a key risk mitigation priority for your organization.

Seyfarth's Pay Equity team can guide you through this evaluation by developing an analysis that evaluates the key components of pay relevant to your organization. We will partner with you to model the compensation practices for your workforce, or you may choose to target a subset of those

employees. The analysis will be designed to align with your organization's objectives, identify and address unexplained differences in pay and ensure that your organization's practices align with stated business policies and priorities.

Together, we will guide you through the life cycle of a pay equity analysis:

1

Initial Contact: Identify Goals and Protect the Privilege

We will kick off the analysis by first identifying your organization's key goals and objectives, including whether to coordinate the timing of the audit with any typical annual review process. We will also identify the appropriate and right-sized internal and external resources necessary to conduct the analysis. Before the substantive components of the project begins, our Pay Equity attorneys will work with you to implement attorney-client privilege protocols to safeguard the analysis to the maximum extent possible.

2

Team Kick-Off Call: Identify Scope and Resources

During our first discussion with the audit team, we will define the scope of the analysis, including identifying the workforce and the components of pay under review. In order to better understand your organization, we will ask for information about compensation structure and pay philosophy and discuss the drivers of employee compensation. Together, we will determine the most appropriate way to group employees for the statistical analysis and identify the job-related factors that are relevant to employee pay.

3

Gather the Data

Our next step will be to partner with the key stakeholders responsible for data collection and maintenance (e.g., HRIS team) to gather relevant data regarding employee pay from the organization's electronic and physical data systems. Because the key data to be analyzed in an audit (such as time with the organization, time in role, job, grade/level, date of hire, performance metrics, and, of course, pay information) may be stored in a variety of systems, we will suggest efficient ways to gather the data.

4

Initial Statistical Analysis and Identification of “Hot Spots”

Once we have gathered the data, we will partner with statistical experts to conduct the statistical analysis. We will interpret the results and identify any “hot spots” within the organization that require further review.

5

Deeper Dive and Further Analysis

Often the initial analysis brings to light errors in the data, individual employees who were slotted in the wrong job or level, or additional factors that drive employee compensation that were not identified initially. We will help your organization identify these issues by leveraging the full force of the statistical tools to identify potential employees or groups of employees that are driving any apparent disparities. We can then work with you to explore additional factors that we may wish to include in the statistical model and data errors that need to be addressed in the further analysis.

6

Potential Pay Adjustments and Reclassifications

After the full investigation of pay differences is complete, we will provide advice related to mitigation strategies if needed. We will present our assessments and preliminary recommendations, and will work with you to develop solutions that stand the greatest chance of success in light of applicable legal, operational, and corporate-culture considerations and constraints. These recommendations may include pay adjustments or reclassification of employee levels or job titles.

7

Potential Changes to Policies and Practices

After reflection on the results of the assessment, we may provide additional recommendations with respect to modifications to policies or practices regarding hiring and starting pay, performance reviews, promotions and bonuses in order to best position the organization for future compliance.




8

Follow-Up

After the audit is complete, we will work with your organization to identify desirability and frequency of routine follow-up analysis, including real-time analysis of pay and promotion decisions. There is no one-size fits all with respect to the audit or follow-up—we have seen nearly every possible pay issue and are able to provide real-time and real-life recommendations on how to ensure that your pay practices are in line with your corporate culture and business objectives.

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
AL Alabama	Gender, Race	Equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than Sex or Race. Employees must “plead with particularity” that the employer violated the pay law, and that the alleged wage differential is not due to a permissible exception under the pay law.	Yes, same establishment.	While there is no outright ban, employers may not refuse to interview, hire, promote, or employ an applicant for employment, or retaliate against an applicant for employment because the applicant does not provide wage history. Wage history means the wages paid to an applicant for employment by the applicant’s current or former employer.
AK Alaska	Gender	Work of comparable character or work in the same operation, business, or type of work in the same locality.	Not addressed	Yes, same locality	No state law
AZ Arizona	Gender	Same quantity and quality of the same classification of work.	Difference in seniority, length of service, ability, skill, difference in duties or services performed; difference in the shift or time of day worked, hours of work; or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation other than sex, when exercised in good faith.	Yes, same establishment/location	No state law
AR Arkansas	Gender	Comparable work	Yes	Not addressed	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
CA California	Gender, race, ethnicity	Substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.	<p>If based on seniority system, merit system, system that measures earnings by quantity or quality of production, or bona fide factor other than protected category, such as education, training, or experience.</p> <p>Must be applied reasonably and other factors must account for the entire wage differential. Defense does not apply if alternative business practice exists that would serve the same business purpose without producing the wage differential. An applicant or employee's prior salary will not justify disparities in compensation; however, this provision cannot be interpreted to mean that an employer may not make a compensation decision based on a current employee's existing salary, so long as wage differential otherwise permissibly justifiable.</p>	Not explicitly permitted in the statute. However, Senator Beth Jackson's May 2015 letter clarified that geographic location may be a bona fide factor other than gender. She specified that it was never the legislature's intent to make this factor unavailable to an employer responding to an equal pay complaint.	No, unless offered voluntarily and without prompting, employers may not seek an applicant's salary history or rely on it to determine whether to offer employment or what salary to offer.

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
 <p>CO Colorado</p>	Gender	Not currently addressed. Effective 1/1/21, SB 85 amends existing law prohibiting wage discrimination “solely on account of the sex” of the employee and expands the law to prohibit discrimination on the basis of sex, or on the basis of sex combined with any other protected status, by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work, regardless of job title, based on skill, effort, and responsibility.	Not currently addressed. Effective 1/1/21, Exceptions provided for wage differential include: work shift, seniority system, merit system, system that measures earnings by quantity or quality of production; the geographic location where the work is performed; education, training or experience reasonably related to the work in question; and travel, if the travel is a regular and necessary condition of the work performed so long as each factor relied on in this section is applied reasonably, the factors accounts for the entire wage rate differential; and that prior wage rate history was not relied on to justify a disparity in current wage rates.	Yes, can rely on differences in geographic location to justify differences in wages so long as this is applied reasonably.	No, effective 1/1/21, employers may not discriminate in employment based on salary history. The Act further prohibits employers from inquiring about a prospective employee’s wage history or from relying on the wage history to determine a wage rate. Employers are prohibited from discriminating or retaliating against a prospective employee for failing to disclose such wage history. Employers also may not rely on prior wage history to justify an disparity in wages.
 <p>CT Connecticut</p>	Gender	Equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions.	Pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential system based upon a bona fide factor other than sex, such as education, training or experience.	Not addressed	No, unless a prospective employee has volunteered such information or unless the request is pursuant to any federal or state law that specifically authorizes the disclosure or verification. The law does not prohibit an employer from inquiring about components of a prospective employee’s compensation structure, so long as the employer does not inquire about the value of the elements of such compensation structure.
 <p>DE Delaware</p>	Gender	Equal work that requires equal skill, effort, and responsibility under similar working conditions in the same workplace.	If based on a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or any other factor other than sex; provided, that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with this subsection, reduce the wage rate of any employee.	Yes, same workplace	No, employers cannot seek the compensation history of an applicant or seek the same from the applicant’s current or prior employer prior to offer acceptance (after offer acceptance may request only for purposes of confirming compensation history). Employers cannot screen an applicant based on their compensation history, including that compensation history meets minimum or maximum criteria.

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
DC District of Columbia	No state Equal Pay law; pay discrimination prohibited under non-discrimination statute	N/A	N/A	N/A	No state law
FL Florida	Sex	Equal work requiring equal skill, effort and responsibility, performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any reasonable factor other than sex when exercised in good faith.	Not addressed	No state law
GA Georgia	Sex	Equal work requiring equal skill, effort and responsibility, performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex.	Yes, same establishment	No state law
HI Hawaii	Sex	Equal work on jobs the performance of which requires equal skill, effort and responsibility, and that are performed under similar working conditions.	If resulting from a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide occupational qualification; or any other permissible factor other than sex.	Yes, same establishment	No, unless offered voluntarily and without prompting, employers may not inquire about, search public records for, or rely on salary history of applicants in the hiring process. Employer may engage in discussions (without inquiry about salary history) about salary or benefit expectations. If applicant voluntarily and without prompting discloses salary history, employer may consider the salary history and may verify such history.
ID Idaho	Sex	Comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.	If differential based on established seniority systems or merit increase systems that do not discriminate based on sex.	Yes, same establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
IL Illinois	Sex, African-American	Same or substantially similar work on jobs the performance of which requires substantially similar skill, effort, and responsibility, and which are performed under similar working conditions.	Any differences in pay must meet the following criteria: (1) not be based on or derived from a differential in compensation based on sex or another protected characteristic; (2) be job related and consistent with business necessity; and (3) accounts for the differential in pay.	Yes, same county	No, Illinois employers are prohibited from (1) screening job applicants based on their wage or salary history; (2) requiring that an applicant's prior wages satisfy minimum or maximum criteria; and (3) requesting or requiring as a condition of being interviewed or as a condition of continuing to be considered for an offer of employment that an applicant disclose prior wages or salary. Unless a matter of public record or if the job applicant is a current employee, employers are also prohibited from seeking the salary, including benefits or other compensation or salary history, of a job applicant from any current or former employer. However, an employer will not violate the statute when a job applicant voluntarily and without prompting discloses such information, provided the employer does not consider or rely on the voluntary disclosures as a factor in potential employment, compensation, or other benefits. Employers are not barred from engaging in discussions with an applicant about his/her expectations with respect to wage or salary, benefits, and other compensation.
IN Indiana	Sex	Equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex.	Yes, same establishment	No state law
IA Iowa	Age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability	Equal work on jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on a factor other than sex.	Yes, same establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
KS Kansas	Sex	Work on jobs requiring equal skill, effort and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on a factor other than sex.	Yes, same establishment	No state law
KY Kentucky	Sex	Comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.	If pursuant to established seniority systems or merit increase systems, which do not discriminate on the basis of sex.	Yes, same establishment	No state law
LA Louisiana	No state Equal Pay law that applies to private employers; pay discrimination prohibited under non-discrimination statute	N/A	N/A	N/A	No state law
ME Maine	Sex	Comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.	If pursuant to established seniority systems or merit increase systems or difference in the shift or time of the day worked that do not discriminate on the basis of sex.	Yes, same establishment	No, employers are prohibited from asking about a job candidates compensation history until after a job offer including compensation terms has been presented. In addition, employers may not directly ask a candidate's current or former employer for salary information or stop current employees from discussing their own or another employee's wages. Employers can confirm a candidate's past pay if the candidate voluntarily discloses it, and the law does not apply if an employer "inquires about compensation history pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes."

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
MD Maryland	Sex and gender identity	Work of comparable character or work in the same operation, in the same business, or of the same type.	<p>If based on: a seniority system that does not discriminate on the basis of sex or gender identity; a merit increase system that does not discriminate on the basis of sex or gender identity; jobs that require different abilities or skills; jobs that require the regular performance of different duties or services; work that is performed on different shifts or at different times of day; a system that measures performance based on a quality or quantity of production; or a bona fide factor other than sex or gender identity, including education, training, or experience, in which the factor:</p> <p>is not based on or derived from a gender-based differential in compensation; is job related with respect to the position and consistent with a business necessity; and accounts for the entire differential.</p>	Yes, same establishment, defined as within the same county	<p>As of October 1, 2020, employers will be prohibited from retaliating against or refusing to interview, hire, or employ any job applicant who either (a) did not provide wage history on a job application, or (b) who requested information about the wage range for the job to which the applicant applied. Employers also will be prohibited from relaying on the applicant's wage history as a way to screen job applicants for the position, or when determining the wages for the applicant if that person is hired. Employers are further prohibited from seeking the wage history of an applicant either orally, in writing, or through another employee, an agent, or from the applicant's current or former employer. However, after an applicant has received an initial offer of employment and that offer includes a specific compensation figure, an employer may rely on any wage history voluntarily provided by the applicant to support a wage offer higher than the initial wage offer and seek to confirm the wage history voluntarily provided by the applicant to support the higher wage offer. These additional exceptions, however, are subject to the additional restriction that the higher wage may not create a pay differential based on sex and/or gender identity.</p>

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
MA Massachusetts	Gender	Comparable work, defined as work that is substantially similar in that it requires substantially similar skill, effort, and responsibility and is performed under similar working conditions; provided however, that a job title or job description alone shall not determine comparability.	If based upon the following: a system that rewards seniority with the employer (provided, however, that time spent on leave due to a pregnancy-related condition and protected parental, family and medical leave, shall not reduce seniority); a merit system; a system which measures earnings by quantity or quality of production, sales, or revenue; the geographic location in which a job is performed; education, training or experience to the extent such factors are reasonably related to the particular job in question; or travel, if the travel is a regular and necessary condition of the particular job. A pay difference will be permissible under MEPA if the entire difference is justified by one of these factors, or by a combination of these factors. MEPA does not recognize any other valid reasons for variations in pay between men and women performing comparable work. Note: Noticeably absent from AG guidance regarding defenses to pay differentials is the catch-all “any reason other than gender” defense that exists under the federal EPA and many other state equal pay laws.	Yes, same geographic area	No. Employers cannot seek salary history from a prospective employee or current or former employer before an offer. If a prospective employee has voluntarily disclosed salary history information, the employer can confirm prior wages or salary or permit a prospective employee to confirm prior wages or salary. Employer cannot require that prior wage or salary history meet certain criteria. Prior wages are not a defense to equal pay complaint.
MI Michigan	Sex	Jobs that require equal skill, effort and responsibility, and which are performed under similar working conditions.	If payment based on one or more of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a differential based on a factor other than sex.	Yes	Yes. State law prohibits local jurisdictions from enacting salary history ban laws.

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
MN Minnesota	Sex	Jobs that require equal skill, effort and responsibility, and which are performed under similar working conditions.	If payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex.	Not addressed	No state law
MS Mississippi	No state law	N/A	N/A	N/A	No state law
MO Missouri	Women	Same quantity and quality of the same classification of work.	Based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation, or factors other than sex, when exercised in good faith.	Yes, same establishment	No state law
MT Montana	Women	Equivalent service or form the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment.	Not addressed	Yes, same establishment or place of employment	No state law
NE Nebraska	Sex	Equal work on jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions.	If pursuant to: an established seniority system; a merit increase system; or a system which measures earning by quantity or quality of production or any factor other than sex.	Yes, same establishment	No state law
NV Nevada	Sex	Equal work on jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a compensation system under which wages are determined by the quality or quantity of production; or a wage differential based on factors other than sex.	Yes, same establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
NH New Hampshire	Sex	Equal work on jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions.	If made pursuant to a seniority system; a merit or performance-based system; a system which measures earnings by quantity or quality of production; expertise; shift differentials; or a demonstrable factor other than sex, such as education, training, or experience.	Not addressed	No state law
NJ New Jersey	Race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, and disability	Substantially similar work, when viewed as a composite of skill, effort, and responsibility.	A seniority system, a merit system, or a bona fide factor other than a protected characteristic, such as education, experience, training, or the quantity or quality of production so long as it is job-related, and based on a legitimate business necessity, and if the employer demonstrates the factor is not based on, and does not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class. The bona fide factor must be applied reasonably, and explain the entire pay differential. The factor will not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.	Comparisons of wage rates will be based on wage rates in all of an employer's operations or facilities.	No, employers may not ask job applicants about their salary history, including prior wages, salary, commission, benefits or any other current or previous compensation. Employers may verify and consider salary history if an applicant voluntarily, without prompting or coercion, provides the information. An employer may not use an applicant's refusal to volunteer salary history information as a consideration in hiring decisions. The law does not apply to internal transfers or promotions, when a federal law or regulation requires that salary history be disclosed, or when an employer is considering an incentive or commission component as part of the total compensation package.
NM New Mexico	Sex	Equal work on jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; merit system; or system that measures earnings by quantity or quality of production.	Yes, within any establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
	<p>Age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic factors, familial status, marital status, and domestic violence victim status.</p>	<p>“Substantially similar work, when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions.”</p>	<p>If pursuant to a differential based on: a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a bona fide factor other than sex, such as education, training, or experience. Such factor: (i) shall not be based upon or derived from a sex-based differential in compensation and (ii) shall be job-related with respect to the position in question and shall be consistent with business necessity. Such exception under this paragraph shall not apply when the employee demonstrates that an employer uses a particular employment practice that causes a disparate impact on the basis of sex, that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and that the employer has refused to adopt such alternative practice.</p>	<p>Yes, same establishment (defined as same geographical region no larger than a county, taking into account population distribution, economic activity, and/or the presence of municipalities)</p>	<p>No, the state law forbids: (1) employers from orally or in writing seeking, requesting, or requiring the wage or salary history from an applicant or current employee as a condition to be interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion (Employers also cannot seek wage or salary history from a current or former employer, current or former employee, or agent of the applicant or current employee’s current or former employer); (2) prohibit employers from relying on the wage or salary history of an applicant in determining whether to offer employment to such individual or in determining the wages or salary for such individual; and (3) prohibit employers from refusing to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee based upon prior wage or salary history, the refusal to provide the same, or because the individual filed a complaint with the department alleging a violation of the law. While employers are forbidden to ask about prior wages, the law does not prevent an applicant or current employee from voluntarily, and without prompting, disclosing or verifying wage or salary history, including but not limited to for the purposes of negotiating wages or salary. The law allows employers to confirm wage or salary history if, at the time an offer of employment with compensation is made, the applicant or current employee responds to the offer by providing wage or salary information to support a wage or salary higher than offered by the employer.</p>

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
NC North Carolina	No state Equal Pay law; there is a general non-discrimination statute, but the statute does not specify prohibited practices.	N/A	N/A	N/A	No state law
ND North Dakota	Gender	Comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.	Differentials that are paid pursuant to established seniority systems, systems that measure earnings by quantity or quality of production, merit systems, or a bona fide factor other than gender, such as education, training, or experience, and which do not discriminate on the basis of gender, are not within this prohibition.	Yes, same establishment	No state law
OH Ohio	Race, color, religion, sex, age, national origin, or ancestry	Work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar conditions	If pursuant to any of the following: a seniority system; a merit system; a system which measures earnings by the quantity or quality of production; a wage rate differential determined by any factor other than protected class.	Not addressed	No state law
OK Oklahoma	Women	Comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility. Differential must be willful.	Where such payment is made pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any factor other than sex.	Not addressed	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
OR Oregon	Gender, race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.	Work of comparable character, which means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title.	Employer decisions must be based on an enumerated set of bona fide factors other than protected class; namely, a seniority system, a merit system, a system that measures earnings by quantity or quality of production, location, travel, education, training, or past experience or any combination of the factors listed, if the combination of factors accounts for the entire compensation differential. Effective 1/1/20: Exceptions exist for collective bargaining agreements and “system” is defined as a “consistent and verifiable method in use at the time” of the alleged violation. Also, it will not be a violation of the law for an employer to pay a different level of compensation to an employee who receives wages for modified work as a result of a medical condition, provided such was requested by the employee, authorized by the employer in a nondiscriminatory manner, and authorized by a medical professional.	Yes, “workplace location” is a factor that may be considered	No. Employer cannot seek salary history from applicant or prior employer before offer. Employer can confirm prior compensation after offer that includes amount of compensation with written authorization of prospective employee. Employer cannot screen job applicants based on current or past compensation or determine compensation based on current or past compensation.
PA Pennsylvania	Sex	Equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex.	Yes, same establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
PR Puerto Rico	Sex	Comparable job functions or duties that require equal skill, effort, and responsibility, and which are performed under similar conditions.	If the result of a bona fide merit or seniority system or a system which measures profits in terms of quantity or quality of the production, or to employees that work in different positions, provided said differences are not the outcome of an intention to discriminate on account of sex.	Not addressed	No. Employer cannot seek salary history from a prospective employee before an offer. If a prospective employee has voluntarily disclosed salary history information, the employer can confirm prior wages or salary or permit a prospective employee to confirm prior wages or salary.
RI Rhode Island	Sex	Equal work or work on the same operations.	If variation in rates of pay based upon either difference in seniority, experience, training, skill, or ability; duties and services performed, either regularly or occasionally; the shift or time of day worked; or availability for other operations or any other reasonable differentiation except difference in sex.	Not addressed	No state law
SC South Carolina	No state Equal Pay law; pay discrimination prohibited under non-discrimination statute	N/A	N/A	N/A	No state law
SD South Dakota	Sex	Comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility, but not to physical strength.	If pursuant to established seniority systems, job descriptive systems, merit increase systems, or executive training programs, which do not discriminate on the basis of sex.	Yes, same location.	No state law
TN Tennessee	Sex	Comparable work on jobs, the performance of which requires comparable skill, effort, and responsibility, and which are performed under similar working conditions.	If differentials based on a seniority system, a merit system, a system that measures earnings by quality or quantity of production, or any other reasonable differential that is based on a factor other than sex.	Yes, same establishment	No state law
TX Texas	No state Equal Pay law; pay discrimination prohibited under non-discrimination statute	N/A	N/A	N/A	No state law

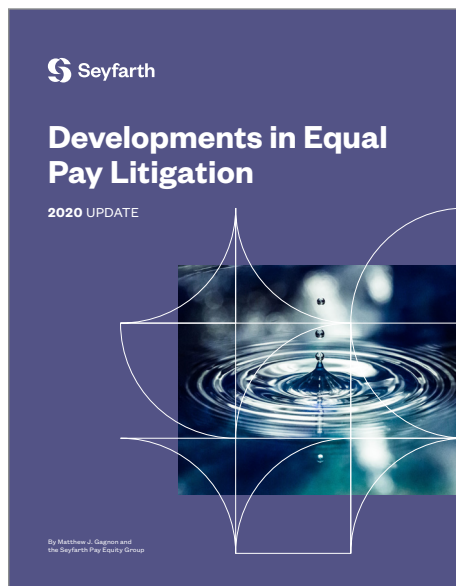
Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
UT Utah	No state Equal Pay law; pay discrimination prohibited under non-discrimination statute	N/A	N/A	N/A	No state law
VT Vermont	Sex	Equal work that requires equal skill, effort, and responsibility, and which are performed under similar working conditions.	If pursuant to: a seniority system; a merit system; a system in which earnings are based on quantity or quality of production; or a bona fide factor other than sex. An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration.	Not addressed	No, employers may not inquire about compensation history. Employers cannot screen an applicant based on their compensation history, including requiring that compensation history meets minimum or maximum criteria. If a prospective employee voluntarily discloses the information, an employer may confirm it after making an offer with compensation.
VA Virginia	Sex	Equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex.	Yes, within any establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
WA Washington	Gender	The performance of the job requires similar skill, effort and responsibility, and the jobs are performed under similar working conditions; job titles alone are not determinative of whether employees are similarly employed.	Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that: Are consistent with business necessity; Are not based on or derived from a gender-based differential; and Account for the entire differential. More than one factor may account for the differential. Such bona fide factors include, but are not limited to: education, training, or experience; a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a bona fide regional difference in compensation levels.	Yes, if it is a bona fide regional difference in compensation levels	No. Under the salary history ban, the law forbids employers from seeking the wage or salary history of an applicant for employment from the applicant or from the applicant's current or former employer, and require that an applicant's prior wage or salary history meet certain criteria. Employers, however, can confirm an applicant's wage or salary history if the applicant has voluntarily disclosed his or her wage or salary history; and may also confirm it after an offer (including compensation) has been negotiated with the applicant.
WV West Virginia	Sex	Work of comparable character, the performance of which requires comparable skills.	If payment is made pursuant to a seniority or merit system which does not discriminate on the basis of sex, or if a differential in wages between employees is based in good faith on factors other than sex.	Not addressed	No state law
WI Wisconsin	No state Equal Pay law; pay discrimination prohibited under non-discrimination statute	N/A	N/A	N/A	Yes. State law prohibits local jurisdictions from enacting salary history ban laws.
WY Wyoming	Sex	Work that requires equal skill, effort, and responsibility, and which is performed under similar working conditions.	If pursuant to: a seniority system; a merit system; a system which measures earning by quantity or quality of production; or a differential based on any other factor other than sex.	Yes, same establishment	No state law

Jurisdiction	Equal Pay Law Protected Class(es)	Type of Work Compared	Permissible factors for pay differential	Reliance on Geographic Location to Explain Difference Permitted?	Statewide Salary History Inquiries Permitted?
Federal Rule	Sex	Equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.	If pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex. Must explain entire wage differential.	Yes, same establishment	No federal law. The Ninth Circuit has held that prior salary, alone or in combination with other factors, cannot justify a wage differential under the Equal Pay Act because prior salary is not job-related. The court stated that an employer may not rely on prior salary to set initial wages. <i>Rizo v. Yovino</i> , 887 F.3d 453 (9th Cir. 2018). This decision is a departure from those of other federal circuits, which have held that, while employers may not rely on salary history alone to support a wage differential, they may do so if prior salary is considered among other factors. On 7/2/20, the Supreme Court declined to review this Ninth Circuit decision.

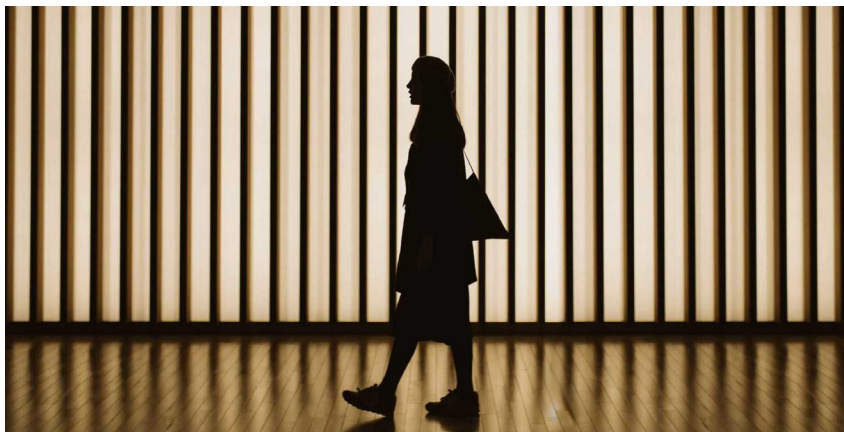
Additional Resources

Pay Equity Guide



<http://seyfarth-ebooks.com/Developments-in-Equal-Pay-Litigation-2020/>

Pay Equity Issues & Insights Blog



www.seyfarth.com/trends/pay-equity-issues-and-insights.html

Contact Information



Christine Hendrickson
chendrickson@seyfarth.com
(312) 460-5836



Annette Tyman
atyman@seyfarth.com
(312) 460-5943



“Seyfarth” and “Seyfarth Shaw” refer to Seyfarth Shaw LLP, an Illinois limited liability partnership. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA, and is authorised and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership. Our Hong Kong SAR office, “Seyfarth,” is a registered foreign law firm operated by its sole registered foreign lawyer in association with Wong, Wan & Partners.