



# ACC Houston Labor & Employment Practice Group CLE Webinar

## *Pay Equity Trends in 2021*

July 15, 2021

**Seyfarth Shaw LLP**

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# Joining You Today . . .

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**Christine Hendrickson**

*Partner*

chendrickson@seyfarth.com



**Shardé Skahan**

*Senior Associate*

sskahan@seyfarth.com



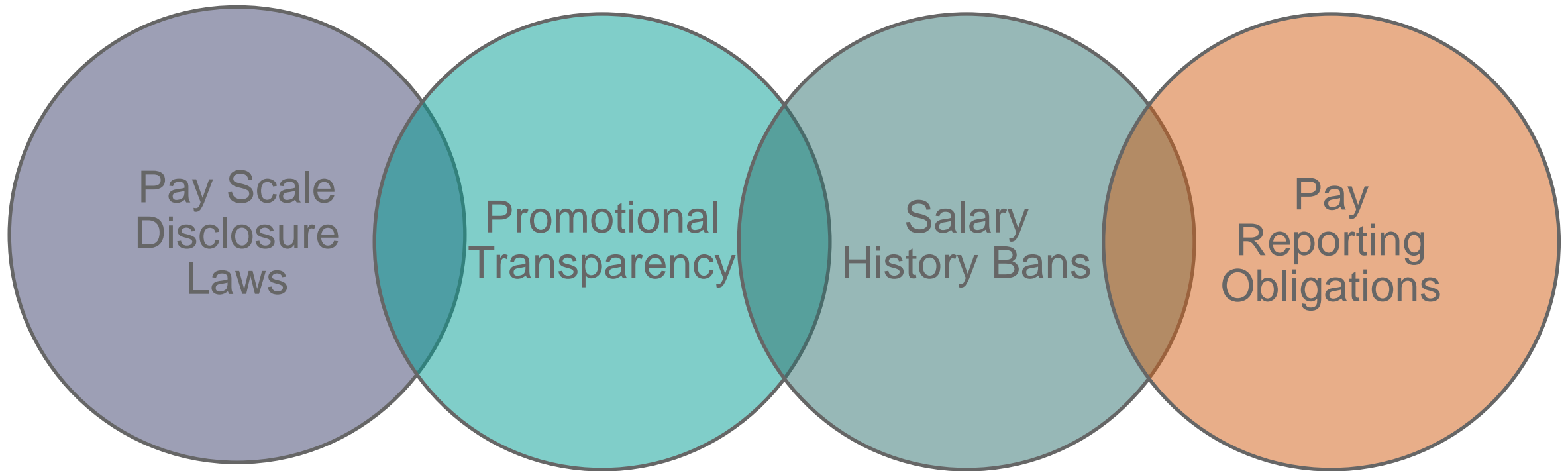
**Maria Papasevastos**

*Senior Associate*

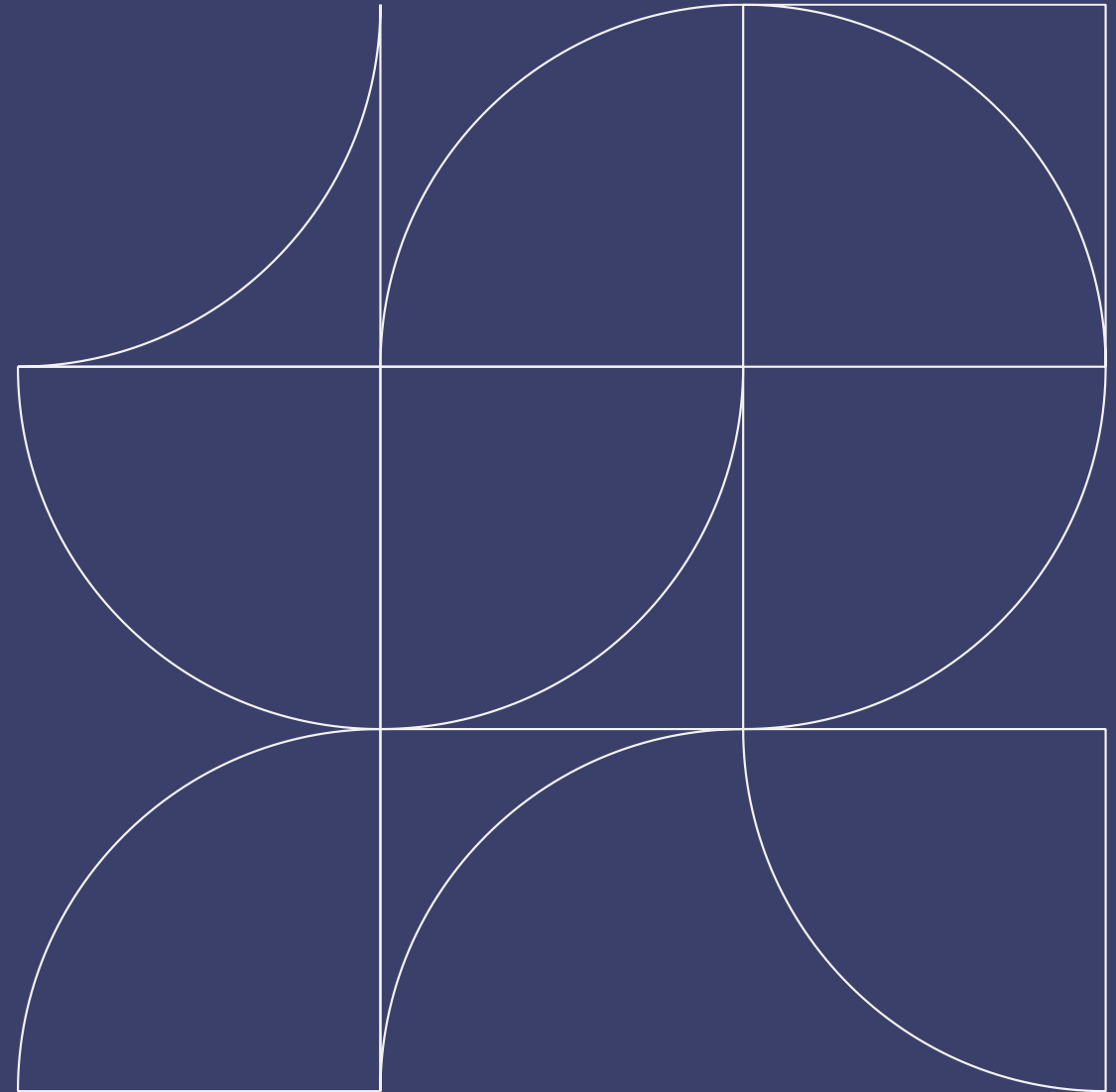
mpapasevastos@seyfarth.com

# Pay Equity Trends in 2021 = Transparency

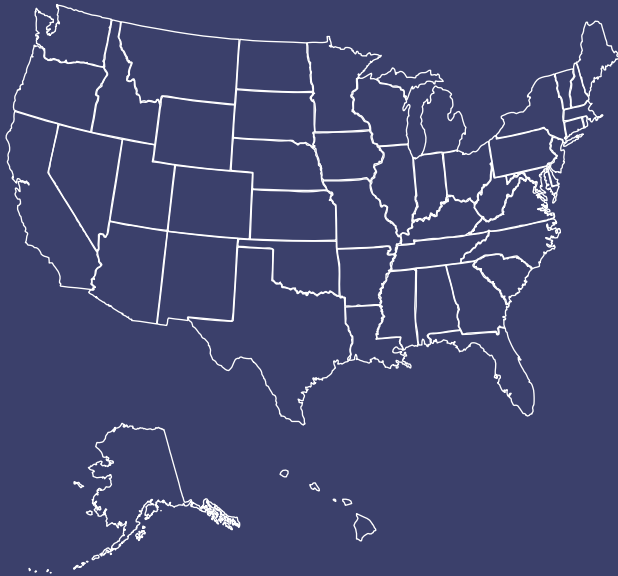
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# Pay Scale Disclosure Laws



## Trend #1



# Pay Scale Disclosure Requirements

## Impacted Jurisdictions:

- California
- Colorado (far-reaching implications)
- Connecticut (Oct. 1, 2021)
- Maryland
- Ohio (Toledo and Cincinnati)
- Nevada (Oct. 1, 2021)
- Rhode Island (Jan. 1, 2023)
- Washington State

# Details on U.S. Pay Scale Disclosure Laws: Applicants Only

	To Whom?	Timing	What Must be Provided
<b>California</b>	Applicants	Upon reasonable request, made after an applicant has completed an initial interview with the employer	Pay scale, which means a salary or hourly wage range
<b>Maryland</b>	Applicants	Upon request	Wage range
<b>Toledo, OH and Cincinnati, OH</b>	Applicants	Upon reasonable request, after a conditional offer of employment	Pay scale

# Details on U.S. Pay Scale Disclosure Laws: Applicants and Employees

	Timing	What Must be Provided
<b>Colorado</b>	On job posting	(1) The hourly rate or salary compensation (or a range thereof); (2) A general description of any bonuses, commissions, equity, etc. that are being offered for the job; and (3) A general description of all employment benefits
<b>Connecticut</b>	Applicants: Upon earliest of (1) applicant's request; or (2) prior to or at the time of an offer of compensation  Employees: Upon (1) hire; (2) change in employee's position; or (3) employee's first request	Wage range, which means the range of wages the employer anticipates relying on when setting wages for a position and may include reference to: (1) any applicable pay scale; (2) previously determined range of wages for the position; (3) actual range of wages for those employees currently holding comparable positions; or (4) the employer's budgeted amount for the position.
<b>Nevada</b>	Applicants: Upon completion of an interview for a position  Employees: For promotion or transfer to a new position if the employee has (1) applied for the promotion or transfer; (2) completed an interview for the promotion or transfer or been offered the promotion or transfer; and (3) requested the wage or salary range or rate for the promotion or transfer.	Wage or salary range or rate
<b>Rhode Island</b>	Applicants: Upon request; and employer <i>should</i> provide a wage range for the position the applicant is applying for prior to discussing compensation  Employees: At hire; when employee moves into a new position; and upon request	Applicants: The wage range the employer anticipates relying on in setting wages for the position and may include reference to any applicable pay scale, previously determined range of wages for the position, the actual range of wages for those currently holding equivalent positions, or the budgeted amount for the position, as applicable.  Employees: May include reference to any applicable pay scale, previously determined range of wages for the position, or the range of wages for incumbents in equivalent positions, as applicable.
<b>Washington State</b>	Applicants: Upon request after initial offer  Employees: Upon request after offer of internal transfer to a new position or promotion	Applicants: Minimum wage or salary for the position for which the applicant is applying  Employees: Wage scale or salary range for employee's new position



# Colorado Equal Pay Act (CEPA)

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- Prohibits employers from discriminating because of sex (alone or with another protected status) by paying less for substantially similar work in terms of skill, effort and responsibility
- Effective January 1, 2021:
  - **Requires announcement of job opportunities** made available to employees in Colorado (“Promotional Opportunity” disclosure)
  - **Requires disclosure of pay information** for jobs in Colorado and remote jobs that can be performed in Colorado (“Compensation Information” disclosure)

# What Needs to be Disclosed in Colorado?

**Jobs in CO and Remote Jobs that Could be Performed in CO**

Notice of Promotional Opportunity\*

Compensation Information Disclosure

**Jobs Outside of CO**

Employers with CO Employees

Employers with no CO Employees

Notice of Promotional Opportunity to CO Employees\*

Nothing

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

# What Is Required to Be Disclosed in Colorado?

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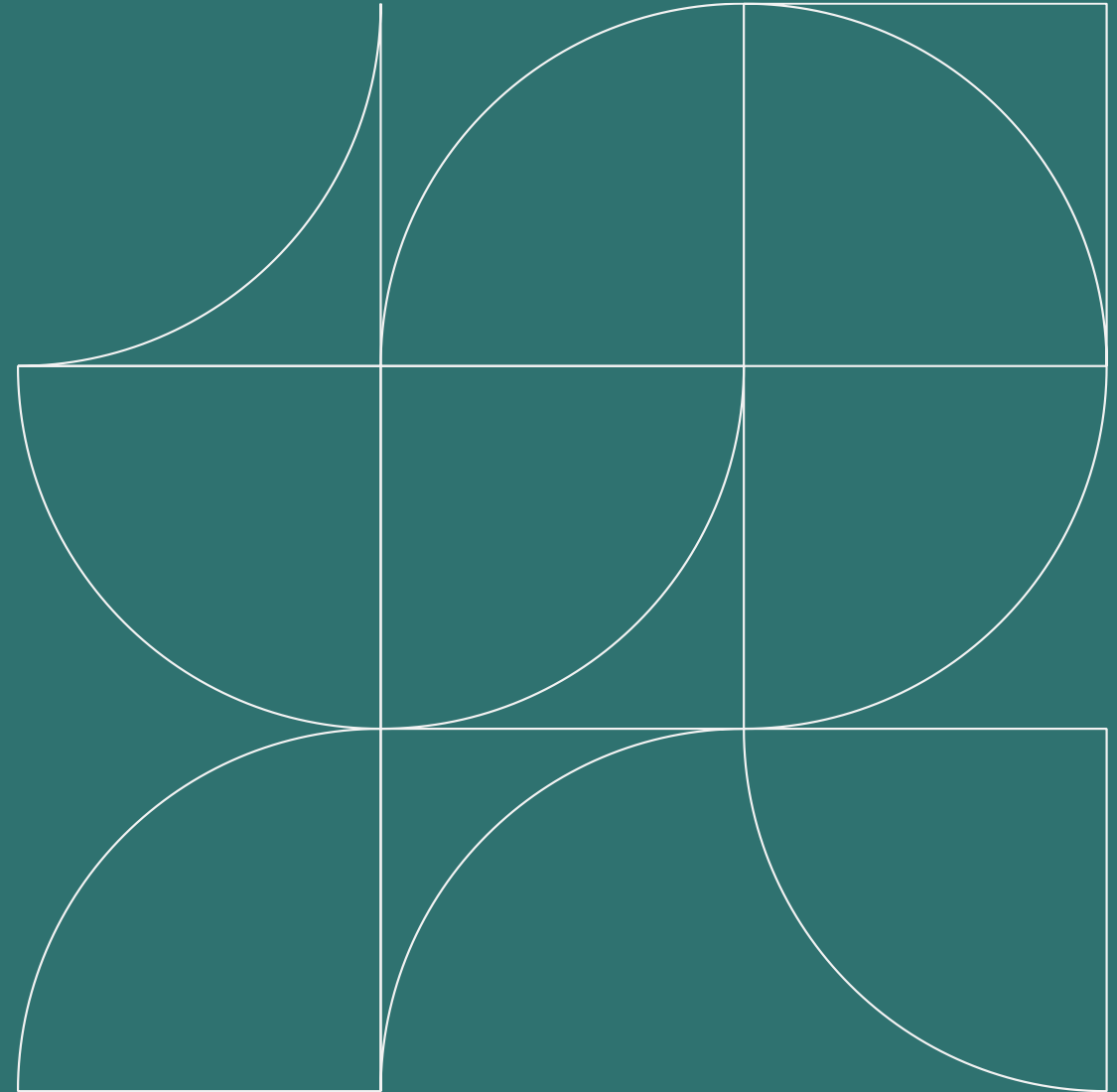
## Compensation Information Disclosure

- Hourly rate or salary compensation range
- General description of any bonuses, commissions, or other forms of compensation being offered for the job; and
- General description of benefits

## Notice of Promotional Opportunity

- Job title;
- Means by which the candidate may apply for the position; and
- When applicable (*i.e.*, for jobs to be performed in Colorado and remote jobs that could be performed in Colorado), compensation information must be included as well

# Salary History Bans



# Jurisdictions with Limitations on Salary History impacting Private Employers

## State Laws

- Alabama
- California
- Colorado
- Connecticut
- Delaware
- Hawaii
- Illinois
- Maine
- Maryland
- Massachusetts
- Nevada
- New Jersey
- New York
- Oregon
- Vermont
- Washington State

## Territories

- Puerto Rico

## Cites and Counties

- San Francisco, CA
- Kansas City, MO
- New York City, NY
- Albany County, NY
- Suffolk County, NY
- Westchester County, NY
- Cincinnati, OH
- Toledo, OH
- Philadelphia, PA

# What You Can and Cannot Ask . . .

## Do Not Ask

How much did you earn at your last company?

What do you make in your current role?

What were your commission payments?

If you give me an idea of what you're making, I can help make a better offer

I can't ask, *but* if you *want* to tell me what you are currently making . . .

## Can Ask

What are your compensation expectations with respect to salary, bonus, benefits, or equity?

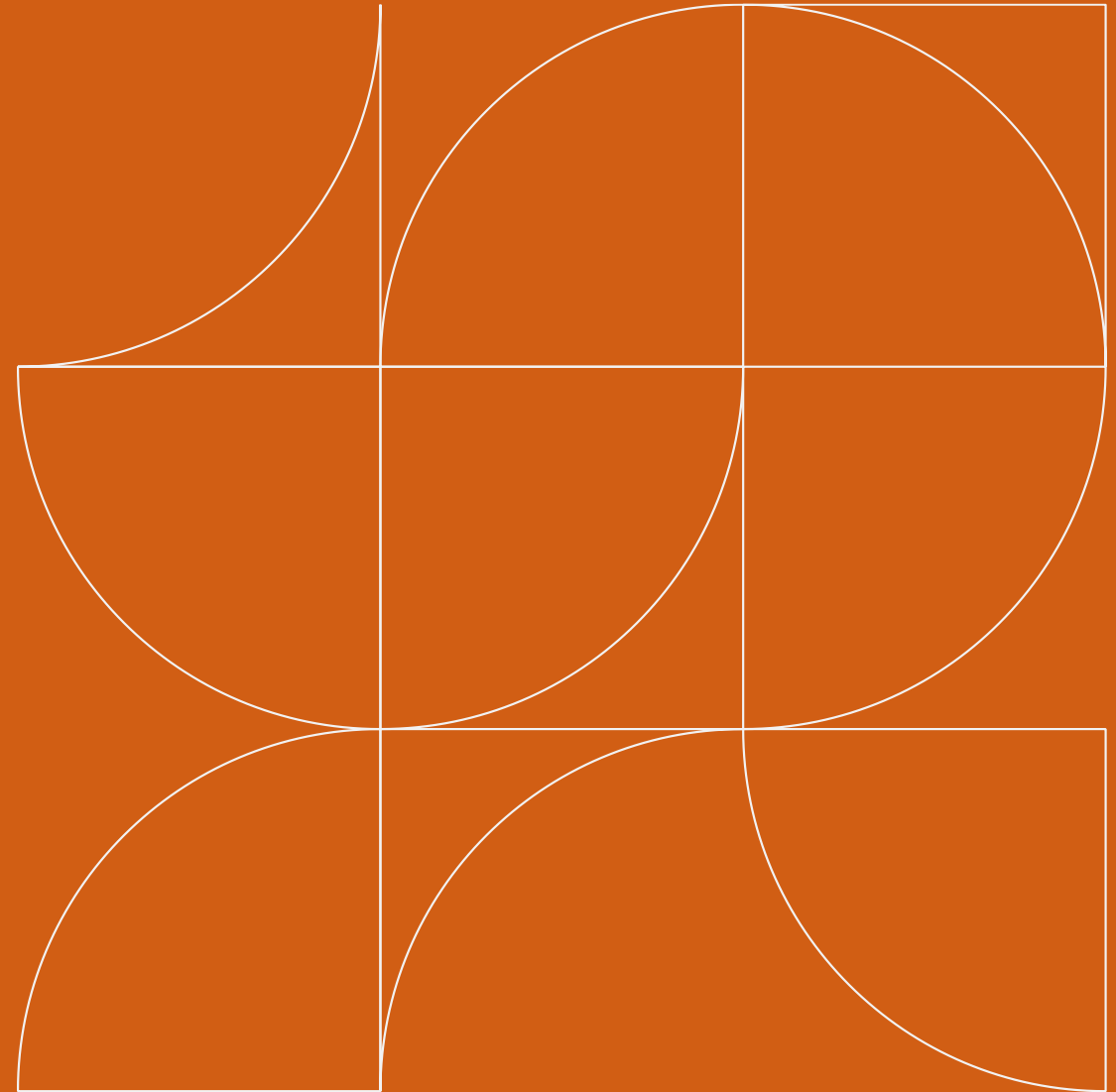
What factors are you considering offer-wise when looking for a new role?

What would make for a compelling offer for you?  
What would it take to get you to move to our organization?

What was your quota attainment relative to your target? What was target %?

Our target compensation is X base and Y bonus. Would this generally be in line with your expectations?

# Pay Reporting Obligations Around the World



# 33%

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**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.

# United Kingdom Gender Pay Gap Reporting

- Requires employers with at least 250 employees to:
  - Report and publish their gender pay gap information within a year following “snapshot date”
  - Publish their gender pay gap information on their own websites for at least three years
  - Upload gender pay gap information to Gender Pay Gap Service (a government website)
- Deadline extended this year to October 5, 2021
- Furloughed employees (as of April 5, 2020) should be included in headcount for 250-employee threshold
- Furloughed employees may need to be included in pay gap calculations
- Furloughed employees whose salaries were topped up full pay during the relevant pay period should be included in all calculations
  - If furloughed employee didn't receive full pay, need to review specific circumstances to see whether the employee should be included in any calculations



# 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

# Canada's Revised Pay Equity Act

- On July 7, 2021, Canada's Minister of Labour announced an August 31, 2021, effective date for Canada's Pay Equity Act
- New regulations published detailing methodology for pay equity audits and plans
- Requirements:
  - Establish a pay equity plan;
  - Eliminate differences in compensation; and
  - Revise and update their pay equity plan at least every five years
- Some employers must also establish Pay Equity Committee
- Three years to develop and implement plan for employers with 10 or more employees

## 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



- Submission California's Pay Data Report began this year
  - Reports are due by March 31 each year
- 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 wages
  - Hours paid even if not worked (e.g. vacation, paid leave)
  - 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 and Reporting



- *Timing for Reporting: Filing with first annual report on or after January 1, 2023*
  - Submit pay equity reports with annual reports filed with Sec. of State
  - Corporations only
  - Filing EEO-1 reports (or similar data) with the state, which will be publically released 90 days later
- *Certificate:*
  - Companies with 100 or more employees + required to file EEO-1 report with EEOC
  - Apply for equal pay registration certificate (between March 24, 2022 and March 24, 2024)
  - Certify compliance with pay equity laws within three years of commencing business

# 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



# 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>

# Three Resources from Seyfarth's Pay Equity Group

