

Pay Transparency Requirements Impacting the Retail Industry

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As more state and local pay transparency laws are enacted throughout the country, retail industry employers face a new challenge in an ever-evolving industry.

State Pay Transparency Laws

Pay transparency laws are in effect in nine states: California, Colorado, Connecticut, Hawaii, Maryland, Nevada, New York, Rhode Island, and Washington. The District of Columbia and Illinois pay transparency laws are scheduled to go into effect on June 30, 2024, and Jan. 1, 2025, respectively. Additionally, at least seven local jurisdictions have pay transparency laws in effect, and proposed legislation is pending in many other state and local jurisdictions. This patchwork of pay transparency laws throughout the country has and will continue to challenge retail industry employers in their hiring practices.

Patchwork Uniquely Impacting Retailers

The requirements of the laws, existing and proposed, generally are similar in that employers must provide a rate or range of pay the employer in good faith believes at the time of the posting it would pay for the advertised job. Many of these laws, however, impose unique requirements that are critical for retail industry employers to consider. For example, retail employers in California with fewer than 15 employees need only provide a pay scale to an applicant upon request, but if an employer employs at least 15 employees, a pay range is required in all job postings. On the other hand, Hawaii's law applies only to employers with at least 50 employees. In some jurisdictions, including Colorado, employers must include a general description of the benefits and other compensation applicable to a specific job being posted. They also must provide the date the application window is anticipated to close.

Retail employers with multi-jurisdiction operations must be aware of and account for these and other new requirements, which likely will continue to evolve as more laws are enacted and existing laws are amended.

Given the high level of seasonality employment in the retail industry, including a surge in hiring during holiday seasons, retail employers must ensure that the job posting includes an accurate good faith rate or range of pay when posted for the job advertised.

Similarly, retail industry employers have a unique challenge when it comes to the competition for talent in areas with pay transparency laws. A seasoned and well-qualified retail employee may shop around when searching for their next seasonal position, focusing on opportunities with the highest rate of pay. This trend can make it difficult for certain retail industry employers to hire workers. Employers should consider and account for the rates and ranges of pay offered by their competitors in particular geographic areas.

The common industry practice of using third-party job-posting vendors is another challenge in the retail industry. Retail employers using a third-party to post or publish a job

posting should provide the rate or range of pay to its third-party vendor to include in their job postings. While some pay transparency laws are silent or do not clearly state when a retail employer is liable for its third-party vendor's violation, failure to provide this information to a third-party vendor could result in penalties and exposure to the employer.

Potential penalties under many of pay transparency laws are on a per-violation basis, which could more significantly impact employers in the retail industry than those in other industries. Because of the high rate of turnover and seasonality of many positions in the retail industry, some retail employers may post a higher number of job listings and advertisements than other industries each year. Thus, the higher number of postings could lead to more non-compliant job postings or advertisements and a higher risk of penalties than for employers in industries with a more stable, long-term workforce.

Additionally, the pay transparency laws in some jurisdictions, including California, provide a private right of action to individuals who believe they have been aggrieved.

Practical Steps for Employers

Retail industry employers must be proactive in identifying applicable pay transparency laws in jurisdictions in which they operate and employ individuals. Retail industry employers should be diligent in developing uniform processes and forms used when advertising for a specific job, accounting for a specific jurisdiction's requirements, to avoid potential penalties or other claims. Moreover, retail industry employers should consider developing and implementing training on pay transparency requirements for individuals within their organization responsible for recruiting and hiring.

This growing trend of pay transparency laws enacted around the United States is here to stay. Retail industry employers, especially those with multi-jurisdictional operations, should plan for these new requirements in more jurisdictions throughout the country. Proactive planning will avoid disruption to hiring needs and operations and mitigate the risk of potential business exposure.

Please contact a Jackson Lewis attorney with any questions.

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