

Alert | Labor & Employment



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New Pay Transparency and Wage History Requirements in Maryland and Washington, D.C.

Maryland and Washington, D.C., are the latest jurisdictions to enact pay transparency and wage history laws, joining other states such as California, Colorado, Illinois, New York, and Washington that are taking steps to address pay disparity concerns.¹

Maryland Pay Transparency and Wage History Amendments

On April 25, 2024, Maryland Gov. Moore signed [Senate Bill 0525](#), which amends the existing requirements limiting employment inquiries and use of applicant wage history under the Maryland Labor and Employment Section 301 *et seq.* Under the amendment, employers engaged in business or a related enterprise in Maryland are required to post the wage range, a general description of job benefits, and any other compensation offered for a job position listed. Additionally, the law prescribes specific recordkeeping requirements for employees and provides additional wage protections for applicants and employees.

The amendment takes effect Oct. 1, 2024.

¹ Note, Gov. Glenn Youngkin (R) vetoed a pay transparency bill in neighboring Virginia on March 14, 2024 ([SB 370](#)).

Pay Transparency Disclosures

The amendment requirements apply to any position that will be physically performed at least in part in Maryland in all public or internal position postings. The “physically performed at least in part in Maryland” language in the amendment calls into question whether the law applies to employers located outside of Maryland but who have remote workers in the state of Maryland. The amendment is silent on this issue.

Employers must set the wage range in good faith. Wage range is defined as 1) the minimum and maximum hourly rate or salary set by reference to any applicable pay scale, 2) any previously determined minimum and maximum hourly rate or salary for the position, 3) the minimum and maximum hourly rate or salary of any individual holding a comparable position at the time of posting, or 4) the budgeted amount for the position.

Pursuant to the law, if a posting with the required job posting disclosures is not made available to an applicant for the position, the employer is required to provide the applicant with the information before having any conversations regarding compensation with the applicant and at any time upon the applicant’s request.

Employers may comply with these disclosure requirements by using a state-provided form. The employer can complete the form and include it in each public or internal job posting, and otherwise make the completed form available to applicants as required.

Expanded Wage Range and History Protections

The amendment adds further retaliation protections for applicants and employees. Currently, employers cannot refuse to interview, hire, or employ an applicant because an applicant will not or refuses to provide their wage history or requests the employer provide the position wage range. Under the amendment, these same prohibitions will apply to current employees. Employers also may not retaliate against or refuse to promote or transfer employees because they did not provide their wage history, requested the wage range for the position, or exercised any other rights under the law. Further, employers may not retaliate against an applicant for exercising any rights under the law.

Notice Requirements and Enforcement

Employers must keep a record of the required disclosures for at least three years after a position is filled or after the position is initially posted (if not filled).

Notably, the amendment removes the existing private cause of action. Instead, the attorney general has the authority to bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief. Failure to comply may result in a letter compelling compliance (first violation) and/or an assessed civil penalty up to \$300 and \$600 (second and third violations, respectively) for each employee or applicant for whom an employer is not in compliance.

Washington, D.C., Pay Transparency and Wage History Amendments

Washington, D.C., published [DC Act 25-367](#) March 5, 2024, amending the D.C. Wage Transparency Act of 2014. The amendment requires all covered employers to disclose pay ranges in job listings and advertisements and to disclose health care benefits before conducting interviews. It also provides additional restrictions regarding prospective employees’ wage history.

The amendment will go into effect June 30, 2024. It applies to employers with at least one employee in D.C. but does not address whether it applies to positions filled by an employee working remotely.

Pay Transparency Disclosures

The amendment requires covered employers to list the projected minimum and maximum salary or hourly pay in all job postings and advertisements. The pay range must reflect the employer's good faith belief, at the time of posting, that it would pay the listed amount for the advertised job. These disclosure requirements apply to job advertisements and internal announcements of promotion and transfer opportunities.

Beyond job postings, the amendment requires employers to disclose health care benefits that employees may receive before interviewing an applicant. Though not required, employers could opt to include such benefits in job postings for convenience. An employer also must disclose the pay range and benefit information to a prospective employee if verbally requested.

Expanded Compensation Information and Wage History Protections

The amendment further expands upon the current prohibition of employer policies and procedures that require employees to refrain from discussing their wages or provide for the discipline of employees who inquired about or discussed their wages or the wages of other employees to include discussions of "compensation" (broader than the prior "wages"). Compensation is defined as "all forms of monetary and nonmonetary benefits an employer provides or promises to provide an employee in exchange for the employee's services to the employer."

The amendment also limits the use of a prospective employee's wage history information. Employers must not screen prospective employees based on their wage history, which is defined as "information related to compensation an employee has received from other or previous employment." This includes prohibitions against requiring a prospective employee's wage history satisfy minimum or maximum criteria; requesting or requiring a prospective employee disclose their wage history; or seeking a candidate's wage history from their prior employer.

Notice Requirements and Enforcement

The amendment requires employers post a notice to employees of all their rights under the D.C. Wage Transparency Act. The posting must be in a "conspicuous place in at least one location where employees congregate."

Such notice should include the following:

- Employees are entitled to know the projected compensation range and health care benefits for any advertised job, promotion, or transfer opportunity;
- An employer cannot require that employees refrain from inquiring about, disclosing, comparing, or otherwise discussing their own compensation or the compensation of another employee;
- Employers cannot discharge, discipline, interfere with, affect a negative impact on terms and conditions of employment, or otherwise retaliate against employees for such inquiries or conversations; and

- Employees cannot be prohibited from lodging a complaint, testifying, assisting, or participating in an investigation or proceeding relating to a violation of this law.

There is no private cause of action under the amended law. Instead, the attorney general has the authority to investigate and to initiate a civil action against an employer for restitution or for injunctive, compensatory, or other authorized relief for any individual or for the public. This includes any attorneys' fees and costs in connection with success of such action. An employer that fails to comply with the amendment will be assessed a civil fine by the mayor of \$1,000 for the first violation, \$5,000 for the second violation, and \$20,000 for each subsequent violation.

Practical Considerations

Before the June 30, 2024, and Oct. 1, 2024, effective dates for the Washington, D.C., and Maryland laws, respectively, covered employers and employers with workers in Washington, D.C., and Maryland should review all job postings and advertisements to ensure they include the required information.

Maryland intends to make available a form with the required disclosures, presumably before the Oct. 1 effective date.

Neither law includes a private right of action, so employers may consider taking steps in job posting disclosures to help insulate themselves from government investigation. For example, if a company maintains many postings about temporary work, they may consider including language that signals the role is a seasonal or a temporary position.

Employers also should evaluate all interviewing and hiring materials to make sure they do not request historical compensation information from prospective employees or their past employers. Further, employers should consider implementing policies to ensure that recruiters and others involved in the hiring process do not ask applicants about their salary history and direct them how to respond to prospective employees' inquiry about pay and benefits. Employers should train all personnel involved with hiring and managing employees on the new requirements.

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