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District of Columbia Joins Pay Transparency Bandwagon

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On June 30, 2024, the District of Columbia Wage Transparency Omnibus Amendment Act of 2023 takes effect, paving the way for new pay transparency obligations for DC employers.

The amendment, which Mayor Muriel Bowser signed on January 12, 2024, will require employers with at least one employee in Washington, DC, to disclose pay ranges in job postings and the existence of healthcare benefits before the first interview. The amendment also will prohibit inquiries regarding employees' wage histories. We describe the main requirements and implications of the law below.

Pay range, healthcare benefits disclosures

Like other pay transparency laws, DC employers will be required to provide the "minimum and maximum projected salary or hourly pay in all job listings and position descriptions advertised." The pay range provided must be based on a "good faith belief" of what the employer would offer for the role at the time of the posting. The law applies to external and internal positions, which include promotions and transfer opportunities.

In a departure from other pay transparency laws, the amendment requires employers to disclose to prospective employees before the first interview the "existence of healthcare benefits that employees may receive" in connection with the role. Although the amendment's legislative history suggests that earlier versions would have required a broad disclosure of a "schedule of benefits" – including bonuses, healthcare and other wellness benefits, stocks, bonds, options, equity, and "nonmonetary remuneration" – the DC Legislature ultimately opted to narrow this obligation and require only a simple disclosure regarding the "existence of healthcare benefits."

Wage history protections

The amendment expands DC's protections against wage history inquiries by employers during the hiring process. Specifically, employers will be prohibited from screening prospective employees based on their wage history, including by "requiring that a prospective employee's wage history satisfy minimum or maximum criteria or by requesting or requiring as a condition of being interviewed or as a condition of continuing to be considered for an offer … that a prospective employee disclose … [their] wage history." In addition, employers will be prohibited from asking prior or current employers for a candidate's wage history. Notably, "wage history" is defined as information "**related to** compensation an employee has received from other or previous employment" (emphasis added). As such, though guidance has not yet been released, it's possible the amendment's prohibition on employer inquiries may extend beyond wages and salaries to other forms of compensation, including equity, bonuses and commissions.

Expansion of existing protections

The amendment also expands existing laws relating to the discussion of wages by employees in the workplace. Existing protections

under DC law restricted employers from banning employees from discussing their wages or the wages of other employees – and protected such employees from discipline and other forms of retaliation. The amendment replaces the term "wages" with "compensation," which is broadly 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." As a result, these protections now extend to employee discussions of both monetary and nonmonetary benefits.

Notice requirement

The amendment requires that covered employers notify DC employees of their rights under DC's Wage Transparency Act by posting a notice in a "conspicuous place in at least one location where employees congregate." The amendment is not clear as to the required contents of the notice, but we anticipate that the DC Department of Employment Services will provide a sample notice for employers to use after the law goes into effect.

Enforcement and penalties

Aggrieved employees will have no direct right to sue their employers for violations of the amendment, but the DC attorney general has authority to investigate violations and enforce the amendment. The attorney general also can initiate a civil action against employers for violations, as well as seek injunctive, compensatory or other authorized relief "for any individual or for the public at large." In such actions, the attorney general can recover reasonable attorneys' fees and costs, as well as statutory penalties equal to the administrative penalties provided by law. Employers also may be subject to civil fines of $1,000 for the first violation, $5,000 for the second violation and $20,000 for each subsequent violation of the law.

Open questions

The amendment leaves several open questions, including:

- Whether it applies to remote positions, including positions that could be filled in DC, or by an employee working completely remotely outside of DC for a DC employer.
- Whether the salary range requirement applies to "job listings" and "position descriptions" posted by recruiting agencies or other third parties.
- What obligations, if any, the employer has if a candidate voluntarily discloses their wage history during the hiring process.

Next steps

While we expect additional guidance from DC on some of these open issues, employers can begin to prepare for the amendment by:

- Reviewing all job postings to ensure accurate pay ranges are included in all applicable external and internal postings.
- Ensuring appropriate disclosure of healthcare benefits before the first interview. (In addition, although not explicitly required under the amendment, employers may wish to consider including such disclosures in their job postings.)
- Training HR and recruiting teams on the amendment's requirements – including information regarding the requirements in other jurisdictions that have implemented or soon will implement similar laws (**such as Hawaii and Illinois**), if an employer operates in multiple jurisdictions.
- Reviewing interviewing and hiring processes to ensure that employers are not requesting information relating to wage history from prospective candidates or prior employers.

- Preparing and posting a notice compliant with the law.

The growing patchwork of pay transparency laws is a trend that will continue in 2024, as several states currently have already proposed legislation under consideration. Even the federal government has jumped into the fray, **proposing a rule in January 2024** that would prohibit federal contractors and subcontractors from seeking and considering information about job applicants' compensation history when making employment decisions for certain positions, and requiring federal contractors and subcontractors to disclose compensation in job announcements for certain positions. In light of this increased emphasis on pay transparency across the US and at the federal level, employers may consider conducting a pay equity audit, with the assistance of legal counsel, to ensure compliance with these new laws. If you have any questions about pay disclosure requirements or pay equity issues, please reach out to a member of the Cooley employment team.

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