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Pay Transparency Laws: Washington, D.C. Is Next

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On January 12, 2024, District of Columbia Mayor Muriel Bowser approved a new set of pay transparency requirements for D.C. employers that will take effect on June 30, 2024.[1] The Pay Scale and Benefits Disclosure Amendment Act of 2023, also known as the Wage Transparency Omnibus Amendment of 2023, modifies the Wage Transparency Act of 2014 and imposes new requirements and prohibitions on *all* non-governmental employers, regardless of size. With these changes, D.C. will join a growing number of other states that have enacted similar pay transparency laws.

The Amendment greatly expands the requirements and prohibitions under the Wage Transparency Act, which until now only protected employee discussions and inquiries regarding their wages. The new law (1) requires employers to provide wage ranges on all job listings and position descriptions, (2) requires employers to disclose before the first interview the existence of any healthcare benefits a prospective employee may receive, and (3) prohibits employers from seeking a prospective employee's wage history and from screening prospective employees based on their wage history. Below is a detailed description of the Amendment and what employers need to know before the law takes effect in June.

New Disclosure and Notice Requirements for Employers

Effective June 30, 2024, employers with at least one employee in D.C.[2] will be required to disclose wage ranges on job postings and disclose the existence of healthcare benefits before the first interview of any candidate. Employers also must post a notice alerting employees to their rights under the amended Act "in a conspicuous place in at least one location where employees congregate."[3]

The amended law requires that employers "provide the minimum and maximum projected salary or hourly pay in all job listings and position descriptions advertised," whether the posting advertises a job, internal promotion, or transfer opportunity.[4] The Act does not elaborate on the scope of the term "job listing" or precisely which internal communications regarding job openings must contain pay information.

The range disclosed for D.C. positions must "extend from the lowest to the highest salary or hourly pay that the employer in good faith believes at the time of the posting it would pay for the advertised [position]."[5]

Employers must also disclose to prospective employees before their first interview "the existence of healthcare benefits that the employees may receive."[6] The Act does not provide further guidance on how employers can satisfy this requirement, but the legislative history suggests that simply disclosing the existence of healthcare benefits, rather than providing a full benefits schedule, may be sufficient.[7]

Prohibited Employer Actions

The Amendment also includes two new prohibited employer actions. Employers may not:

- "Screen prospective employees based on their wage history;"[8] or
- "Seek the wage history[9] of a prospective employee from a person who previously employed the individual."

Additionally, the Amendment expands the scope of the currently enacted prohibitions by replacing the term "wages" with "compensation" throughout the Act. These prohibitions prevent employers from banning employee discussions or inquiries about "compensation" and prohibit retaliation against employees who make such discussions or inquiries.[10] "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."[11]

Consequences of Violating the Law

Penalties for failing to comply with these new statutory requirements begin with a civil fine of $1,000 assessed for the first violation, escalating to $5,000 for the second violation, and $20,000 for each subsequent violation.[12] Unlike some pay transparency laws in other states, the D.C. law provides no grace period, initial warning, safe harbor, or other opportunity to cure first-time violations before the imposition of a civil fine.

The Amendment does not create a private right of action, but does authorize the Office of the Attorney General to investigate violations of the Act and to enforce its provisions.[13] The Attorney General is also granted the power to bring a civil action against an employer to deter future violations, through which an employer could be subject to restitution, injunctive relief, compensatory damages, attorneys' fees and costs, and "statutory penalties equal to any administrative penalties provided by law."[14]

Next Steps for Employers, Prior to June 30, 2024

- Employers with at least one employee in D.C. should review all job postings (including internal transfer or promotion offers) to ensure they will include the position's minimum and maximum salary.
- Employers should ensure prospective employees are informed of any potential healthcare benefits before they are interviewed, and ensure that the prospective employee's wage history is not sought during, or factored into, the hiring process.
- Employers should prepare a notice of their employees' rights under the Act for posting alongside other required federal and state employment posters or in any other conspicuous place where employees congregate.

Paul Hastings is monitoring all developments, including the proposal and progress of similar pay transparency legislation in Maryland and Virginia, and will provide updates when they are available.

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[1] Although D.C. "enacted" the Amendment via passage by the D.C. Council and signature from the Mayor, the Amendment will become final law after the Congressional Review Period. *See* District of Columbia Home Rule Act, D.C. Code §§ 1-201.01 *et seq.*, Pub. L. 93-198 (1973) (requiring any civil act approved by the Mayor and the D.C. Council to then pass a Congressional review period before becoming law; in the absence of Congressional veto, the act will become law). The Amendment was transmitted to Congress on January 22, 2024, with Congressional review projected to be completed by March 9, 2024.

[2] Under the new Amendment, "employer" is defined as any "individual, firm, association, or corporation" other than the District government or federal government, "that employs at least **one** employee in the District." D.C. Act 25-367(a)(3) (to be codified as amended at D.C. Code § 32-1451(2)) (emphasis added). Unlike D.C.'s non-compete laws, the Wage Transparency Act's definition of "employer" does not indicate the extent to which an employee needs to "work in D.C." to bring an employer under the Act's coverage. Employees who are fully remote, who are based out of a D.C. office but occasionally work remotely from other states, or those who work for companies based outside of D.C. but who live in and work remotely from D.C. *could* all be covered by the Act.

[3] D.C. Act 25-367(d) (to be codified as amended at D.C. Code § 32-1453b).

[4] D.C. Act 25-367(d) (to be codified as amended at D.C. Code § 32-1453a(1)).

[5] D.C. Act 25-367(d) (to be codified as amended at D.C. Code § 32-1453a(1)).

[6] D.C. Act 25-367(d) (to be codified as amended at D.C. Code § 32-1453b).

[7] This provision was enacted as an amendment to the original proposed bill to "protect employers from the requirement that they disclose a full schedule of benefits during the first interview" for those "small business [that] are unable to provide detailed information regarding the schedule of benefits without more knowledge of their staffing capabilities." *See* Rationale for Amendment #1 (Councilmember Bonds). No benefits disclosures are required on job postings. *See* Committee on Executive Administration and Labor Committee Report, Committee Reasoning, p. 3.

[8] This prohibition includes "requiring that a prospective employee's wage history satisfy minimum or maximum criteria" or "requesting or requiring" a prospective employee disclose their wage history "as a condition of being interviewed or as a condition of continuing to be considered for an offer of employment." D.C. Act 25-367(b)(4) (to be codified as amended at D.C. Code § 32-1452(4)).

[9] D.C. Act 25-367(b)(4) (to be codified as amended at D.C. Code §§ 32-1452(4)-(5)). The Act defines "wage history" as any "information related to compensation an employee has received from other or previous employment." D.C. Act 25-367(a)(4) (to be codified as amended at D.C. Code § 32-1451(4)).

[10] These employer actions were already prohibited on the federal level as a violation of Section 8(a)(1) of the National Labor Relations Act by the National Labor Relations Board in its decision in the *Tinley Park Hotel and Convention Center, LLC* case.

[11] D.C. Act 25-367(a)(2) (to be codified as amended at D.C. Code § 32-1451(1)).

[12] D.C. Code § 32-1455(a).

[13] These procedures include the power to examine witnesses under oath, issue subpoenas, and compel production of documents and testimony.

[14] D.C. Act 25-367(e) (to be codified as amended at D.C. Code §§ 32-1455(b-1)(1)-(3)).