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Connecticut Employers Face New Pay Transparency and Equal Pay Requirements

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Connecticut Governor Ned Lamont recently signed Public Act 21-30, entitled "An Act Concerning the Disclosure of Salary Range for a Vacant Position" (the "Act"), which goes into effect on October 1, 2021. The Act prohibits employers from failing or refusing to provide an applicant for employment or current employee with the wage range for that person's position under certain circumstances, and also amends Connecticut's equal pay law to prohibit paying an employee less than what the employer pays an employee of the opposite sex for *comparable* work, whereas the law used to prohibit only unequal pay for equal work.

Affirmative Provision of Wage Ranges

Connecticut employers will be prohibited from failing or refusing to provide an applicant for employment the wage range for a position for which the applicant is applying, upon the earliest of (a) the applicant's request, or (b) before or at the time the applicant is made an offer of compensation.

Connecticut employers will similarly be prohibited from failing or refusing to provide current employees with the wage range for the employee's position upon (a) the hiring of the employee, (b) a change in the employee's position, or (c) the employee's first request for a wage range.

The Act defines "wage range" as "the range of wages an employer anticipates relying on when setting wages for a position." The definition adds that "wage range" "may include reference to any applicable pay scale, previously determined range of wages for the position, actual range of wages for those employees currently holding comparable positions or the employer's budgeted amount for the position." The Act also defines wages to include "compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation."

Violations of the Act are enforced by a private right of action for employees or applicants for employment, who can claim within two years of a violation in order to recover compensatory damages, attorney's fees and costs, and punitive damages.

Lower Bar to State Equal Pay Claims

The Act also amends Connecticut's equal pay for equal work law to, instead, require equal pay for *comparable* work. The Act prohibits paying employees of one sex less than employees of the opposite sex for comparable work "when viewed as a composite of skill, effort and responsibility and performed under similar working conditions." If an employee can prove such a claim, then the burden shifts to the

employer to prove that the difference is based on factors other than gender, such as “(1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential system based upon a bona fide factor other than sex.” The “bona fide factor other than sex” already expressly included education, training, and experience, and the Act added credential, skill, and geographic location to that list.

Additional Thoughts

Given the Act’s affirmative requirement to provide wage ranges to current and prospective employees even in the absence of a request, Connecticut employers should, before October 1, create wage ranges for all positions within their organizations. They should also consider providing training for employees involved in the hiring process to convey the nuance of the wage range disclosure requirements.

It remains unclear whether the Act’s definition of “wages” encompasses—and therefore requires disclosure of—discretionary bonuses. Similarly, the Act does not define “position.” Those ambiguities may leave employers struggling to determine the precise wage range necessary for disclosure to each employee and prospective employee.

Connecticut employers should also conduct a pay equity audit and rectify any pay discrepancies on the basis of sex. Even if the audit reveals no such discrepancies, it can help establish a defense to unequal pay for comparable work claims under the Act.



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