

Wage Ranges for All? Federal Pay Transparency Legislation Introduced

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H.R. 1599, or the “[Salary Transparency Act](#),” was recently introduced in the U.S. House of Representatives. This proposed legislation, if enacted, would have wide-reaching ramifications for employers across the country. In short, the Act would require all employers nationwide—apparently irrespective of their size or number of employees—to include wage ranges in all job postings, as well as provide wage ranges to applicants and existing employees upon request.

Mandates and Definitions

As the proposed bill currently stands, it would require all internal and external job postings to include the specific wage or wage range tied to the position that is being posted. Moreover, the proposed legislation stipulates that, to the extent an applicant was not earlier provided with the wage or wage range, employers would be required to provide it to an applicant prior to discussing potential compensation further. Employers would also be required to provide wage ranges to both applicants and current employees upon their request and—in the case of current employees—annually after the date of hire.

It may provide some solace to employers that the legislation defines “wage range” with a fair deal of flexibility. Specifically, wage range is defined as “the range of wages or salaries and other forms of compensation” that the employer anticipates it will rely on “in good faith” when setting the compensation for a position. The legislation goes on to provide that a wage range generally “may include reference to any applicable pay scale, previously determined wage range for the position, the actual wage range

for those currently holding equivalent positions, or the budgeted amount for the position.” The potential methods for establishing an *existing* employee’s wage range are slightly more restrictive. Defined wage ranges for current employees “may include reference to any applicable pay scale, previously determined wage range for the position, or the wage range for incumbents in equivalent positions, as applicable.”

Regardless of the apparent flexibility afforded in terms of defining wage ranges, the bill—if enacted—would create potentially onerous requirements on employers that they otherwise would not be accustomed to. Stated differently, the Act would create wage range mandates that, to date, have only been enacted in a select number of states and locales.

Anti-Retaliation Provision and Potential Remedies

H.R. 1599 would also prohibit an employer from retaliating against an applicant or existing employee for exercising their rights under the proposed bill. In particular, employers would be prohibited from refusing to interview, hire, promote, or otherwise taking some adverse employment action against an individual merely for exercising their rights under the Act (e.g., requesting the wage range for a posted position).

As the bill stands, violations of the Salary Transparency Act would subject employers to a civil penalty of \$5,000 for a first violation, which could be increased incrementally by \$1,000 for subsequent violations up to a \$10,000 per violation

cap. The Act would also establish a new private right of action for applicants and employees—both for themselves and on behalf of others who are “similarly situated”—which could result in statutory damages ranging from \$1,000 to \$10,000 or actual damages (whichever is greater), attorney’s fees, and injunctive relief.

Steps Moving Forward

While the proposed Salary Transparency Act is in its early days, and it is far from certain that the legislation will be enacted, its introduction at the federal level should serve as a reminder to employers that wage transparency laws are here to stay and will likely continue to proliferate. Employment counsel across the country will assuredly be tracking H.R. 1599 closely. But in the meantime, employers should take this opportunity to assure that they are complying with those state and local wage transparency laws that are already in effect, including in jurisdictions such as California, Colorado, Washington, and New York City.

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