

Publications

Hawaii Requires Pay Transparency and Expands Equal Pay Protections

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CLIENT ALERT | 7.24.2023

Effective January 1, 2024, Hawaii will become the latest jurisdiction to require employers to disclose salary information in job listings. Hawaii has also expanded its equal pay act to encompass all protected categories under state law, not just sex. Contact your Vorys lawyer if you have questions about pay disclosure or equal pay laws.

Required Pay Disclosures

Hawaii employers of 50 or more employees will be required to disclose in job listings the hourly rate or salary range that reasonably reflects the actual expected compensation. The disclosure requirement does not apply to internal transfers or promotions with a current employer. The law does not define what an “hourly rate” or “salary range” is, nor does the law specify whether the 50-employee threshold counts only employees in Hawaii or all of an employer’s employees nationwide. Employers should take steps to ensure that their job listings will display an hourly rate or salary range beginning on January 1, 2024.

Equal Pay Law

Currently, Hawaii’s equal pay law prohibits pay discrimination between employees because of “sex” when the employees are performing “equal work.” Beginning in 2024, however, the law expands the prohibition on pay discrimination to prohibit such discrimination because of “any protected category” when the employees are performing “substantially similar work.” Protected categories under Hawaii law include race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, reproductive health decision, or domestic or sexual violence victim status. Other states, such as California and New York, have adopted the requirement that work need only be “substantially similar” rather than “equal;” Maryland and Oregon require that the work be “of a comparable character.” An individual aggrieved by a violation of the equal pay law could seek remedies for an unlawful discriminatory practice by filing a complaint with the Hawaii Civil Rights Commission.

Employers should review their pay structures to ensure that pay differences for “substantially similar work” are based on a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide occupational qualification; or a differential based on any other permissible factor other than a protected category.