



Key Legal Updates in Hiring Compliance

October 10, 2024

Agenda

1 Wage Transparency

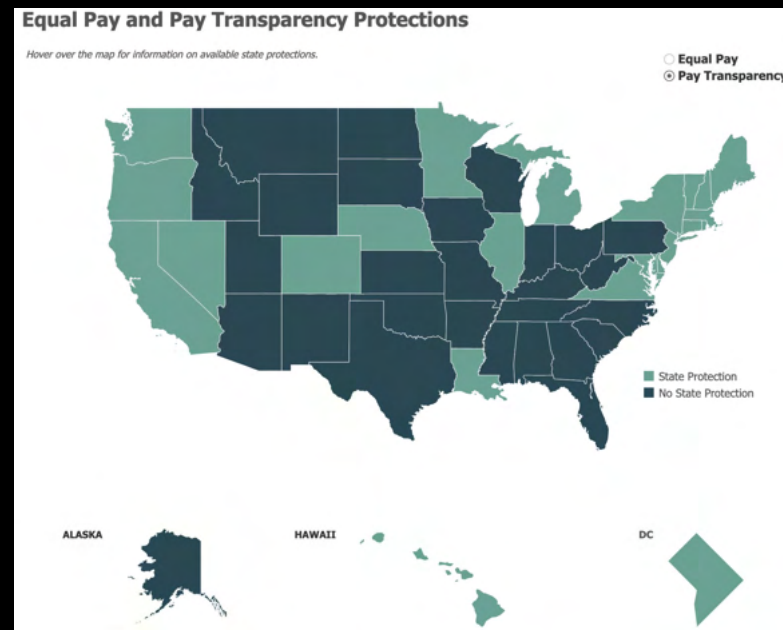
2 Pre-Employment
Inquiries

3 Employee
Notice

4 Q&A

Wage transparency

- According to the US Department of Labor, 23 jurisdictions (including D.C.) have some type of wage transparency protections.
- Not all wage transparency laws work the same way.
 - Protections (passive)
 - Disclosures (active)



















Protections

Passive protections require inaction from employers. Under these type of laws, employers may not prohibit employees from disclosing, discussing, or inquiring about wages. They also prohibit employers from retaliating against employees for exercising their rights around wage sharing.

California	Illinois	Minnesota	Oregon
Colorado	Louisiana	Nebraska	Rhode Island
Connecticut	Maine	Nevada	Vermont
Delaware	Maryland	New Hampshire	Virginia
D.C.	Massachusetts	New Jersey	Washington
Hawaii	Michigan	New York	

Disclosures

Active protections require employers to make certain disclosures or maintain certain records. This list excludes requirements to disclose wages as part of negotiations/at time of hire.

	CA	CO	CT	DC	HI	IL	MD	NV	NY	RI	WA
Affirmative Disclosure											
Upon Request											

States with significant requirements

These states go above and beyond when it comes to wage transparency.

California

All employers must disclose the pay scale for a job to applicants upon request after an initial interview and keep a record of titles and wage rates for 3 years after employment ends.

Employers with 15 or more employees must include wage range in all job postings. Employers with 100 or more employees must submit a wage data Report with CA Civil Rights Dep't.

Colorado

All job postings must include the wage range, any bonuses, commissions, etc., and a general description of benefits.

Must also include application instructions and end date. Employers must maintain a record of job descriptions and wage rates for each employee during their employment and for two years after their employment ends.

Illinois

Upon hire, employers must notify employees of their pay rate, and collection details, in writing. If possible, the notice should be acknowledged by both parties.

Employers with over 100 employees must obtain an Equal Pay Registration Certificate (EPRC). Beginning 1.1.25, employers with 15+ employee must include pay scale and benefits in job postings.

New York

Employers with 4 or more employees must include wage ranges and job descriptions in job postings for positions performed in NY, or performed remotely but report to an office in NY.

Employers must obtain written acknowledgment that new hires have received written notice of their payment details.

Recent legislation

States are continuing to pass new wage transparency laws. Below are some of the upcoming effective dates:

	Effective Date	Employee Threshold	Job Posting Requirements
Illinois	January 1, 2025	15+ in state	Wage range, benefits description, other comp
Massachusetts	July 31, 2025	25+ in state	Wage Range
Minnesota	January 1, 2025	30+ in state	Wage range, benefits description, other comp.
Vermont	July 1, 2025	5+	Wage Range

Pre-employment inquiry: Basics

- There are laws from all levels of government: Federal → State → Local
- Laws vary in the type of restrictions they put on employers (prohibited questions vs. prohibited information vs. employee protections)
- Some questions can only be asked at certain stages of pre-employment (application vs. interview vs. after job offer)
- Laws tend to be topic specific

[Federal EEOC Guidance](#)

Pre-employment inquiries: Best practices

Be consistent in your hiring process

Create a hiring process that treats all applicants the same to prevent unlawful discrimination

Keep in mind Equal Opportunity Employment Protected Characteristics

Limit questions to legitimate business interests

Avoid asking questions that aren't related to **bona fide occupational qualifications**

Many banned questions have exceptions for legitimate business interests and legal compliance

Be mindful of the timing of the questions you ask

Some questions can only be asked after an interview or after a firm offer

Medical information



Under the ADA

Employers can't ask about disabilities, medical history, or require medical tests before making a job offer.

They can ask if the candidate can perform the job and how.

Before a Job Offer



Employers may ask for medical exams, but only if they ask all candidates, not just those with disabilities.

Employers must keep medical information in separate, confidential files.

After a Job Offer




Most states have laws that match the federal standard, but they extend to most or all employers.

Some localities ban questions about height or weight with an exception for business justifications.

State and Local Laws

Criminal history (Ban the box)



 State and local governments try to minimize discrimination against those with criminal records by limiting how and when employers can ask about criminal history

- Generally prohibited in initial applications and postings

 Criminal history is usually allowed to be used after certain stages of the applications process:

- Offered an interview
- Conducted an interview
- After the applicant has been deemed qualified
- Conditional offer of employment

 Some states swing the other direction and explicitly protect criminal history inquiry and stop local governments from passing their own laws.

Financial history

Wage and Salary History

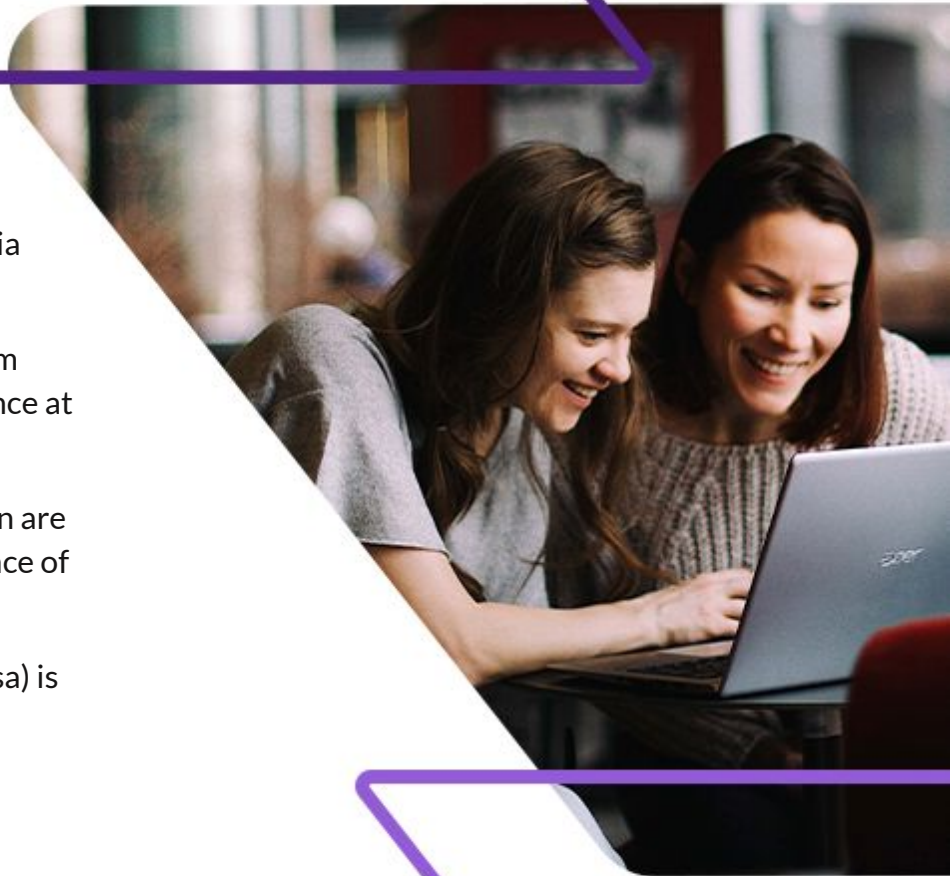
- Many states and local governments ban asking about wage history
- Prospective employees are allowed to voluntarily provide their wage history
- If wage history is provided “voluntarily and without prompting” some states allow employers to verify or use that information.
 - Some state still ban wage history use in hiring decisions even if the information wasn't asked for

Credit History

- Federal FCRA and some states require employers to notify prospective employees of credit history checks
- Some states ban using credit history for employment decisions
- Some states ban with specific Exceptions for positions like (managers or company finance) or industries (financial institutions, credit card application processing, or law enforcement)

Age and family questions

- California, Colorado, Connecticut, Minnesota, and Pennsylvania restrict age related questions and information
- Beginning July 1, 2024 Colorado employers are prohibited from inquiring into applicants' ages, birth dates, or dates of attendance at educational institutions on an initial employment application.
- Personal questions about Marital Status or Number of Children are not strictly prohibited federally, but they can be used as evidence of an intent to discriminate
- Only asking women certain questions but not men (or vice versa) is "clearly discriminatory"



Citizenship and I-9 Verification

- Federally employers must verify employment eligibility using form I-9
 - Some states require employers use the federal E-Verify system.
- Most employers should not ask whether or not a job applicant is a United States citizen before making an offer of employment.
 - Federal law prohibits employers from conducting the Form I-9 and E-Verify processes before the employee has accepted an offer of employment.



Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No.1615-0047
Expires 05/31/2027

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.

Work authorization requirements don't give employers the right to discriminate based on citizenship or national origin

SixFifty Research: Pre-Employment Inquiry Queries

Research

Generate 50-State Hiring Kit

Search

Pre-Employment Inquiries

Jurisdiction	Topic	Subtopic
Alabama	Pre-Employment Inquiries	Salary History
Alaska	Pre-Employment Inquiries	Medical History
Arizona	Pre-Employment Inquiries	Medical History
Arizona	Pre-Employment Inquiries	Ban the Box
California	Pre-Employment Inquiries	Cannabis Use
California	Pre-Employment Inquiries	Age
California	Pre-Employment Inquiries	Medical History
California	Pre-Employment Inquiries	Credit History
California	Pre-Employment Inquiries	Salary History
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Colorado	Pre-Employment Inquiries	Age
Colorado	Pre-Employment Inquiries	Medical History
Colorado	Pre-Employment Inquiries	Credit History

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LEGAL UPDATES AND TRENDS

THURSDAY, NOVEMBER 7

LEAVE POLICY STRATEGIES



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Employee notices

Drug Testing

If an **Alabama** employer requires drug testing, it must:

- Adopt a written drug testing policy;
- Provide its policy to employees and prospective employees for review; and
- Provide a notice of the drug testing requirement on all job postings for positions that require drug tests.

Drug testing notices

If an Vermont employer requires drug testing, it must:

- Inform prospective employees in writing of the drug testing procedure;
- Include a written list of the drugs it will test for; and
- Provide a notice that therapeutic levels of medically-prescribed drugs tested will not be reported.

Other states with notice requirements regarding drug testing include Alaska, Arizona, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Maine, Minnesota, Mississippi, Missouri, Tennessee, West Virginia, and Wyoming

New hire wage notices

In Maryland, employers must provide written notice to employees at the time of hire of:

- Their rate of pay,
- Regular paydays, and
- Leave benefits

Maryland employers must provide notice at least one pay period in advance of any change in wage or payday.

Other states have similar wage notice requirements, including Alaska, Connecticut, Delaware (3+ employees), Hawaii, Idaho, Illinois, Louisiana, Minnesota (requires signed notice), New Hampshire, New Jersey, New York (signed notice), North Carolina, South Carolina, Utah, and West Virginia.

Less common new hire notices

In **Wisconsin**, employers that implement any restriction on employees' hairstyles, facial hair, or clothing must provide notice of those restrictions to new employees upon hire.

In **Washington, D.C.**, if employer has an anti-moonlighting policy, that policy must be written and provided to employees within 30 days of their acceptance of employment and again any time the policy changes.

Thank you!

Any questions?

Drop them in the Q&A
panel in Zoom

Help us uncover how HR teams are
managing employment law compliance!

Take the State of Employment Law
Compliance Survey

