



## Labor & Employment @Iert

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### Cleveland Employers Must Now Comply with Local Pay Transparency Requirements

Most employers in Cleveland are now required to comply with the city's new pay transparency requirements. The ordinance, which took effect on October 27, requires covered employers to include pay range information on job postings and advertisements and prohibits them from inquiring about or using an applicant's compensation history in the hiring process. Through this legislation, Cleveland has joined a growing list of municipalities across the state and country, including Toledo, Columbus and Cincinnati, that impose pay transparency requirements on local employers.

#### Covered Employers

Cleveland's pay transparency requirements apply to any employer with 15 or more employees within city limits, including full-time, part-time, temporary or seasonal employees, as well as those engaged through an employment or staffing agency. Job placement and employment agencies that operate on behalf of covered entities are also subject to the requirements.

#### Compensation History Ban

Covered employers are now generally prohibited from inquiring about an applicant's compensation history if that individual is being considered for a job to be performed with Cleveland city limits. Similarly, employers may not screen applicants based on their compensation history or rely solely on that history when making hiring decisions or determining compensation during the hiring process. Additionally, employers are prohibited from retaliating against an applicant who refuses to disclose their compensation history.

While Cleveland's ordinance is similar to pay history bans enacted by other state and local governments, it contains several exceptions where the prohibitions do not apply, including if:

- An applicant voluntarily discloses their compensation history.
- The employer is otherwise permitted by federal, state or local law to rely on an applicant's compensation history.
- An applicant is an existing employee seeking an internal transfer or promotion.

Importantly, employers are still permitted to ask about an applicant's expectations for salary or other compensation during the hiring process. If those expectations do not align with the employer's anticipated compensation for the position, this factor can most likely serve as a basis for removing the applicant from further consideration.

#### Pay Transparency Requirements

In addition to complying with the compensation history prohibitions, covered employers in Cleveland must also include a pay "range or scale" on their job postings, notifications or advertisements. While the ordinance does not define any specific requirements for the range or scale, employers should consider what they reasonably expect the compensation to be for a position when including a range or scale on a job posting, notification or advertisement.

#### Noncompliance Consequences

Employers who fail to comply with Cleveland's pay transparency requirements face investigation by the city's Fair Employment Wage Board (FEWB), as well as civil penalties ranging from \$1,000 to \$5,000 per violation. Any

individual can file a complaint with the FEWB within 180 days of the alleged violation. If the FEWB determines that a violation has occurred, it will provide notice and a copy of the complaint to the employer, who will then have 90 days to self-correct any alleged violation before the FEWB assesses monetary penalties. Employers who disagree with any violation or penalty may appeal to Cleveland's Director of Finance and Board of Zoning Appeals.

### Next Steps

Employers in Cleveland should review and update their hiring and job posting procedures to ensure they are including the required pay range or scale, as well as complying with the compensation history prohibitions. Employers who also operate, hire or recruit outside of Cleveland should take additional steps to confirm their compliance with any other applicable state or local pay transparency requirements.

Given the growing number of jurisdictions that impose pay transparency requirements, employers should train and educate their human resources, compensation and recruiting teams about applicable legal requirements, as well as the employer's specific philosophy for establishing pay ranges and effectively communicating compensation information to employees and applicants. Any employer with specific questions or concerns regarding their pay transparency compliance obligations should contact legal counsel.

### FOR MORE INFORMATION

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