

PUBLICATION

Impact of Equal Pay Transparency Laws on PERM Recruitment Practices

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Employers who file labor certifications/PERM applications on behalf of their workers need to prepare for changes in the recruitment process that will be driven by Equal Pay Transparency (EPT) laws. Many states have enacted EPT laws that could have a significant impact on the PERM process. The Department of Labor (DOL) regulations do not require employers to include a wage or wage range in the required Sunday newspaper ads or the three additional recruitment steps for professional positions (e.g., job search website, local or ethnic newspaper, employer's website, etc.), but the regulations do require employers to state a wage or wage range in the Notice of Filing posted at the employer's worksite. This wage disclosure and inclusion in all forms of recruitment during a labor certification process must now be considered through the lens of recently and soon-to-be enacted EPT laws in various states.

States that currently have EPT laws that require the disclosure of wages include Colorado, Connecticut, Maryland, Nevada, New Jersey, and Ohio. California, Rhode Island, and Washington State have passed EPT laws that go into effect on January 1, 2023. New York's EPT law went into effect on November 1, 2022. Not all EPT state laws require that salary information be published in a job posting, but some require it to be provided to an applicant upon request at the time an employment offer is made.

Not all EPT laws are the same and differ depending on the location. For instance, in California, employers with 15 or more employees will be required to include pay ranges in their printed job postings. Regardless of the number of employees, all employers in California will be required to disclose the pay range to job applicants who request that information. In Rhode Island, all employers are required to provide the pay or pay range to job applicants upon request before discussing compensation.

The Colorado Department of Labor and Employment (CDLE) has acknowledged the difficulty in reconciling the state's EPT requirements with PERM obligations. Therefore, at this time, the CDLE has stated they will not enforce EPT rules in PERM recruitment, but also will not be issuing written guidance to confirm their position. If conducting recruitment in Colorado, you should confirm that the CDLE's position has not changed before you start recruitment. The specific wage disclosure requirements must be carefully reviewed when initiating recruitment for a labor certification in an EPT jurisdiction to ensure the recruitment process complies with the EPT laws in effect.

The Department of Labor provides an [interactive map](#) that shows which states have equal pay or pay transparency protections, as well as a chart with the details of these protection for each state.

EPT laws requiring that wages be published in job postings can have an impact on an employer's PERM application because the PERM rules do not override relevant EPT wage disclosure requirements. While EPT laws do not change the PERM regulations, states with EPT laws will have to incorporate those into their PERM practices, including posting wages or wage ranges in their advertisements where required. Because EPT laws vary by state, employers should consult with their employment counsel to ensure that their PERM program and recruitment methods adhere to local EPT rules.

If you have any questions about EPT impacts on PERM practices, please contact [Melanie C. Walker](#) or a member of either of Baker Donelson's [Labor and Employment](#) or [Immigration](#) Groups for more information.

Debra Amann, a paralegal at Baker Donelson, contributed to this article and is not admitted to the practice of law.