

Podcast

The Year Ahead 2024: Pay Equity

By K. Joy Chin & Andrew F. Maunz

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Transcript

Alitia Faccone:

Welcome to We get work™ and The Year Ahead 2024 podcast series. Covering workplace issues from both subject matter and industry perspectives, the 19 episodes in our series provide both big picture trends and detailed tactics that can help employers achieve their workplace ideal, while remaining real about regulations, compliance challenges, and more in 2024. Jackson Lewis invites you and others at your organization to experience the report's legislative, regulatory, and litigation insights in full at our website, JacksonLewis.com, or listen to the podcast series on whichever platform you turn to for compelling content.

Joy Chin:

Thank you for joining us for this special episode of We get work™ for The Year Ahead 2024 Report. Today, we're talking about pay equity, and what we may expect to see this year in terms of legislation, regulation, and litigation trends. I'm Joy Chin. I'm co-lead of Jackson Lewis' Pay Equity Resource Group, and co-lead of our Affirmative Action OFCCP Compliance Practice Group. I'm here with my colleague and good friend, and co-lead of the Pay Equity Resource Group, Drew Maunz. Drew, why don't you tell our listeners about yourself?

Drew Maunz:

Thanks, Joy. Joy, I work in Jackson Lewis' Pittsburgh office. As you said, I'm one of the co-leads with you of the Pay Equity Resource group. And I joined Jackson Lewis in February of 2021, and prior to that, I worked at the EEOC, where I was the agency's legal counsel, so working on issues of pay equity and the EEO-1 pay data collection. So this is a topic near and dear to my heart. Joy, why was this topic important to present as part of The Year Ahead in 2024?

Joy Chin:

Well, in addition to it being near and dear to your heart, Drew, as you and I have seen, pay equity has been a focus for many groups, employers, employees, enforcement agencies, plaintiffs' counsel, shareholders, investors, the public at large, for a long time now, and that's why we've seen a hodgepodge of state and local laws cropping up around the country. But I think the biggest movement in this space, legislatively speaking, over the past couple of years, has been, and I think will

continue to be, transparency, especially at state and local levels. From what I've seen, the transparency movement has had the most impact on employers in terms of how they operate and how they approach compensation.

What we've seen over the years is that transparency has moved from regulations requiring an employer to disclose compensation information based on some triggering event. You had to wait until an employee or an applicant asked before you shared pay or benefits information, or an interview was completed, or a job offer was extended. And now what we've seen is that these laws are requiring employers to take action. And I would say the greatest trend in pay transparency over the last year was requiring employers to include pay scale information on job postings. So over the last year, we've saw about 15 states, counties, and cities, that have adopted legislation, and many more are pending. I'm not going to go through the laundry list, because rather than a 10-minute podcast, this would become a little miniseries and we'd have to keep coming back. Hawaii is one of the most recent states, and then that act went into effect on January 1st of this year. So based on that, I think we can expect to see more and more state and local legislation requiring disclosure of wage ranges for job openings.

At the federal level, the Salary Transparency Act was introduced in the House in March of last year, and that would amend the Fair Labor Standards Act to require employers to disclose wage ranges for job openings. It was referred to the House Committee on Education and the Workforce in the same month of last year. There's been nothing to report since. I think this is probably going to be a tough year to gather consensus to get this act through Congress, so I would expect to see more and more legislation at the state and local levels.

So three other trends I think we can anticipate this year with respect to pay transparency. So the first trend I think we can anticipate this year is opportunity transparency, and that requires employers to notify their employees of opportunities for promotion or a career in salary advancement, and the pay ranges for those opportunities. So for example, effective January 1 of this year, in Colorado, that state's Equal Pay for Equal Work Act requires employers to notify employees not only of opportunities for promotion, but of all job opportunities, and including the pay range for those opportunities. And all job opportunities essentially has been defined as any job opening that the employer is seeking to fill or that's been externally posted.

I think a second trend we can anticipate this year is a private right of action for these pay transparency laws. In Washington State, that state's Equal Pay and Opportunity Act allowed for a private right of action. And last year, by the end of 2023, we saw about 50 private class action suits filed, and we're still counting. And by the way, that Federal Salary Transparency Act that was introduced also included a private right of action. So I expect to see, we can anticipate not only more actions, but more regulations being passed, allowing a private right of action.

And then, finally, I think the third trend that we can anticipate this year is more states and local governments passing government pay data reporting requirements. California and Illinois already have those requirements in place, so I wouldn't be surprised to see other jurisdictions adopting similar pay data reporting

requirements. Speaking of which, Drew, what are your thoughts about the EEO-1 component 2 reporting? Will EEOC's pay reporting requirement come back from the ashes this year?

Drew Maunz:

Thanks, Joy. Yes, I think it's very possible that the EEOC will restart a pay data collection of some kind, likely as part of the EEO-1 report. For those that remember, at the end of the Obama administration, the EEOC implemented a pay data reporting requirement as part of the EEO-1 that became known as Component 2. There was only one collection of Component 2 data, and then the EEOC scrapped it, has not collected Component 2 over the past few EEO-1 collections. However, the Biden administration, and the current EEOC majority on the commission, is interested in pay equity generally and specifically in collecting pay data information from employers, so I fully expect the EEOC to begin that process in 2024.

The process is a long one that requires several rounds of public comment, and perhaps even a public hearing, so this is not something that the EEOC can implement quickly, or without ample notice to employers of the impending requirement to provide pay data. But it's certainly something employers should be aware of as being on the horizon, and that something that EEO-1 reports, likely in the future, will need to take into account to fully comply with the EEOC's requirements.

Joy Chin:

Yikes. All right, Drew. In terms of enforcement at the state and local levels, in addition to the Washington State private cases, we've also begun to see enforcement by state agencies, such as in Colorado and New York City, of the pay transparency Laws. And I expect we'll continue to see more state agency enforcement, especially the longer these regulations are on the books. What do you think we might see in terms of enforcement and litigation at the federal level?

Drew Maunz:

I fully expect federal agencies to be very aggressive in their enforcement of pay equity, in particular the EEOC. The EEOC just confirmed a new general counsel who has already started rolling out her enforcement agenda. The EEOC has become more aggressive in its litigation generally. As I mentioned earlier, pay equity is a high priority of the EEOC and the Biden administration, so I expect that aggressive enforcement to certainly include pay equity claims, both under the Equal Pay Act and Title VII, the two most likely statutes that are going to be the grounds for enforcement actions of the EEOC.

And it's something important for employers to keep in mind, the EEOC is not limited to just filing a lawsuit based on the charging party who made the charge to the EEOC. The EEOC can file a class action based on any charge, if its investigation uncovers class claims. The EEOC can file a class action in court and not need to get the class certified. So the EEOC has very strong enforcement abilities, and certainly the equal pay space is an area where the EEOC can really flex its muscles as far as class actions and its ability to expand investigations.

So not just looking at litigation that's on the horizon, but even investigations that may be pending right now. Employers should certainly keep an eye on those, and certainly keep an eye on the EEOC attempting to expand investigations with requests for information, seeking pay information nationwide or in facilities that are not at issue in the charge, all of those things that an investigator and the EEOC can do to expand a case, and perhaps even make it a class action lawsuit in the end. So it's certainly something for the employers to keep in mind, I fully expect the EEOC to have a very robust litigation agenda, and I fully expect equal pay claims to be a major part of that.

Joy Chin:

Drew, I always enjoy talking to you, and I always find your insights valuable, even though it's always a bit frightening. But with what we're seeing and anticipate this year, I think employers should develop a playbook as to what they need to do to get their compensation houses in order. And with the start of a new year, and perhaps instead of Dry January, think of it as re-January. It's an opportune time for employers to review compensation and pay systems, especially as more and more jurisdictions are requiring us to pull back the curtain on pay, and as we see increased enforcement on these laws.

So we will keep you updated on the latest throughout the year, through our alerts and blog posts and additional podcasts. Thank you, Drew, and thank you all for listening.

Drew Maunz:

Thank you.

Alitia Faccione:

Thank you for joining us for The Year Ahead 2024 special edition podcast series. Please tune into our next episode, where we will continue to tell you not only what's legal, but what is effective. All of our Jackson Lewis podcasts are available to stream and subscribe on Apple Podcasts, Google Podcasts, Libsyn, Pandora, SoundCloud, Spotify, Stitcher, and YouTube.

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