

Podcast

# Pay Equity and Transparency in Financial Services

By Stacey A. Bastone & Michael A. Giarratano

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## Meet the Authors



### Stacey A. Bastone

Principal

(631) 247-0404

Stacey.Bastone@jacksonlewis.com



### Michael A. Giarratano

Associate

631-247-0404

Michael.Giarratano@jacksonlewis.com

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## Transcript

### INTRO

*Achieving compliance with pay transparency regulations in job postings can be difficult due to the evolving patchwork of local and state laws. However, recent trends reveal that financial firms are 54% more likely to disclose pay equity results than companies in other industries.*

*On this episode of We get work™, we discuss recent regulatory developments in pay equity and how these laws may affect the financial industry.*

*Our hosts today are Stacey Bastone, principal, and Michael Giarratano, associate, resident in the Long Island office of Jackson Lewis, and members of the Pay Equity group.*

*Stacey and Michael, the question on everyone's mind today is, what steps should financial services industry employers take to prepare for and comply with multi-state pay equity regulations proactively, and how does that impact my business?*

### CONTENT

#### Stacey A. Bastone

Principal

Hi, everybody. I'm Stacey Bastone and I'm here with my colleague, Mike Giarratano. We're here to chat with you about recent developments in pay equity, specifically the wave of pay equity transparency laws that we've seen many states enact over the past few years and how these laws may affect the financial industry in particular. We're going to spend most of our time discussing the recent statutory requirements that require employers to include information regarding their salary ranges and job postings — and how employers can prepare for and be proactive in complying with those laws.

To start, pay transparency is not necessarily a new thing, especially to employers in the financial sector. Studies have shown that financial firms are actually 54 percent more likely to disclose pay equity results compared to other industries. Now the study doesn't go into detail about what types of analyses the employers are contemplating, but at least at a basic level, the financial industry seems to be more transparent. There's good reason for this. For years now, they've been facing pressures to be more transparent. For instance, many financial firms receive pressure from investors who want transparency when they're entering into agreements or when they're pitching for work. So, the financial sectors are used to responding to these types of questions.

Mike, on top of that, there were also international requirements that financial institutions have already had to comply with. What do you think about those?

**Michael A. Giarratano**

*Associate*

Yes, Stacey. There are two that come to mind. First, the one in the United Kingdom which requires public disclosure of pay information. UK employers must publish a standalone gender pay gap report on their company website. In addition to that, that gender pay gap report is also included on the UK government's searchable database — so high disclosure there.

What information must UK employers disclose? Specifically, they must:

- Include the mean and median gender pay gap and the mean and median bonus gender pay gap, and
- Describe the proportion of men and women in each pay quartile.

In addition to the UK, the European Union has a pay transparency directive that will require member states to comply with obligations by June 2026. These obligations include:

- Disclosing salaries in job postings or before an interview;
- Complying with employee requests for pay data;
- A salary history ban in which employers cannot request pay history information from applicants;
- Pay level and progression pay must be based on specific gender-neutral criteria that employees have access to and can review;
- Also, employers cannot prohibit employees from discussing pay in the workplace;
- Employers must measure and publish specific metrics regarding a pay gap;
- And, if a pay gap exists, employers must correct and/or perform an assessment and create a gender action plan.

As we described the obligations above, these obviously can be very burdensome to employers and provide a lot of information to employees and the public. But for now, I'll turn it back over to Stacey, who will discuss the United States obligations.

**Bastone**

Before we look forward to where things are and where they're going, I want to do a little bit of a look back at what's led up to this point. For years, the laws on the books regarding pay equity were at the federal level and traced back to the Federal Equal Pay Act and Title VII.

The Federal Equal Pay Act has been on the books for years and years. When we think about equal pay for equal work, that's coming from the EPA. And then Title VII talks more generally about nondiscrimination in the workplace, including nondiscrimination and compensation. And those were the laws of the books for many, many years. While Congress tried over the years to enact stricter standards and even more stricter laws that would be more beneficial to employees, they didn't really gain traction.

And then in the late 2010s, we saw the states start enacting their own fair pay laws. And so, what we've been left with at the state level is really a patchwork of laws that have some common themes. So not specifically talking about the requirement to include salary ranges and job postings yet, and thinking about the broader state laws, what they were really aiming to do is to expand who people can compare themselves to when bringing claims of inequity.

On top of that, while expanding the comparative groups, these state laws were also limiting the defenses available to employers to explain why there may be differences in pay. Many of these state laws also prohibited pay secrecy — you can't tell employees that they can't engage or talk about their pay. And it also prohibited employers from inquiring about salary history to stop them from potentially perpetuating any prior discrimination or disparities.

On top of that, we saw the states taking up pay reporting requirements in the form of annual compliance reports. So, California has the California pay reporting requirements where annually employers have to provide information about their employees' pay on a more aggregate level. And then in Illinois, of course, if you are an Illinois employer, you may be familiar with the requirement to give really specific line-by-line information about your employees' pay. This one's fairly new. And then the most recent trend is the pay transparency in job postings. Mike, why don't you give us a little bit of an overview of those?

### **Giarratano**

Sure, Stacey. Again, the pay transparency in job postings is also a patchwork of laws that has been expanding across the United States in multiple jurisdictions at the local level and also at the state level. But there are some common themes here:

- Disclosure of pay ranges to job seekers.
- Disclosure of pay ranges to employees and promotional opportunities.
- Disclosure of the salary range — that salary range needs to be a good faith estimate of what the employer reasonably believes and expects to pay for that specific position.

But some of these state laws have distinguishing factors. Some require, in addition to the salary range, for the employer to post the benefits that are

associated with the position. Also, there is a requirement for some employers to post for internal opportunities, such as promotions and the salary range for that promotional opportunity, and whether this will apply to remote employees.

One good example is the New York State law versus the New York City pay transparency law:

- In New York City, employers must disclose the following in their job postings: They must disclose the anticipated minimum salary and maximum salary for the job. And this will only apply to jobs that can or will be performed in whole or in part in New York City.
  - New York State, on the other hand, has a pay transparency law in which employers must disclose the anticipated salary range for the job in addition to the job description if one exists. And this applies to jobs that will be physically performed in New York or jobs that will be physically performed outside of New York but will report to a supervisor, office or other work site in New York.

So, there are some minor distinctions there that can have some potential large impacts as to what law applies to what part of the workforce.

### **Bastone**

Interesting, Mike. There are also differentiations in terms of enforcement. Most states like New York don't have a private right of action, meaning an employee or an applicant can't sue for violations. But in New York, there is enforcement by the New York City Commission on Human Rights. They actually initiated over 30 complaints at the end of 2023. There, what we saw were allegations that employers were not either not including a range at all or there was a range, but the range was too broad and deemed unreasonable.

The good news in New York though is that we haven't seen financial penalties stemming from these violations. We can contrast that with Washington State where there is a private right of action and plaintiffs' lawyers are having a field day filing complaints where the monetary penalties can pile up rapidly depending on the number of applicants.

On top of this, there's a proposed rule for federal contractors that would require salary disclosures similar to what we've seen from the state laws. And this would be enforced by the federal agency, the Office of Federal Contract Compliance Programs. So, Mike, what should employers be thinking about now?

### **Giarratano**

It's a great question, Stacey. From an employer's perspective, disclosing this pay information in your job postings provides applicants a lot of information about what you pay, but it can also disclose what your competitors are paying for a similar position. And this will increase the market value for some positions if people can come in and negotiate their salary for a specific position if this information is now public.

In addition, think of it from an employee's perspective. They can scroll on

LinkedIn and see what jobs are posted at the company that they're working at and see the range and see whether they fall within that range for that position that they are in. This can particularly affect employee relation issues if they find that they're either on the lower end of the range, but they have a lot of tenure with the company.

There are also some compression issues that come with that: For long-tenured employees, but the market has moved potentially, you might have to address those longer-tenured employees about their raises having kept up with the market. And that can also cause employee relations issues because we now know that employees are more open to talking about pay in the workplace. This can have an impact on morale and productivity. And it also can increase employee complaints and/or litigation. These are just some areas that employers should be thinking about prior to these regulations coming into effect.

### **Bastone**

Right. For those employers who are already dealing with these issues or are preparing to deal with these issues, there's certain things that they should be thinking about if they aren't already. At a very high level, you need to think about your philosophy to pay. Do you have a consistent approach to how you pay?

When we talk about how to pay, we should really be thinking about how we pay for a position, not for an individual person. So ideally, we should be setting salary ranges for our existing positions. Because once we have salary ranges, at least at a minimum, we could do a review to make sure that any of our existing employees are paid within that range before we go ahead and we post the jobs.

But ideally, you want to go beyond that. Ideally, you are identifying and implementing a compensation philosophy where it could be carried out consistently: Where you know what it is that you're paying for, that you're evaluating your systems on a periodic basis, that you're reviewing your job descriptions and policies to make sure that the disclosed salary ranges are consistent for each of your positions.

At the end of the day, you want to develop a plan to make sure that there's ongoing compliance — that you have annual reviews, annual check-ins at a minimum, and that you have a plan. Ideally, you want to be able to be in a position where, if the laws develop in the future, you're in a position to respond. That includes making sure you document the decisions that you're making now and document what your range is and why you're paying people certain ways and why you're paying people what you are. And make sure that you're training everybody involved in the process so they understand what the obligations are; they understand how you as the employer expect them to carry out and fulfill those obligations.

The best practice is really to engage in a pay equity analysis. If you haven't done one of these ever, or not in a while, this is a great reason to go ahead and conduct that analysis — really so that you can get a benchmark of how are you doing. Are you paying your employees equitably? You don't want to be in a position where you're posting your salary ranges for potential employees and your current

employees to see without really understanding whether or not you have a pay equity issue.

With that, I want to thank you all for taking time out to spend with us today. We really appreciate your time.

## OUTRO

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