

Ledbetter's Legacy Shines In 2024 Equal Pay Law Updates

By **Kathleen Caminiti and Amanda Blair** (December 19, 2024)

This year marked the 15th anniversary of the Lilly Ledbetter Fair Pay Act — and also marked the death of its namesake, Lilly Ledbetter, a pioneering activist for equal pay. Notwithstanding attacks on diversity, equity and inclusion programs, Ledbetter's legacy is likely to endure for years to come thanks to the many pay equity initiatives we've seen spring up throughout the country.

In recent years, states throughout the country have enacted progressive legislation expanding the scope of pay equity laws, going well beyond the federal requirements of both the Lilly Ledbetter Fair Pay Act and the Equal Pay Act. As pay equity has evolved, state governments have promoted equal pay with measures such as salary history bans, pay transparency and pay data reporting.

This article recaps key equal pay legislation, highlighting developments from 2024, and exploring important takeaways for 2025 and beyond.

Understanding Pay Equity: Key Legislation You Need to Know

In 1963, the federal government enacted the Equal Pay Act, which requires that men and women in the same workplace be paid equally for substantially equal work. Notably, it does not require an intent to discriminate to present an equal pay claim. Title VII of the Civil Rights Act further protects against wage discrimination based on sex and other categories.

In 2009, the federal government passed the Lilly Ledbetter Fair Pay Act in response to a U.S. Supreme Court ruling that threatened employees' ability to file Title VII pay discrimination complaints. The Lilly Ledbetter Fair Pay Act ensures individuals can maintain the timeliness of an unfair pay claim, making it easier for workers to sue their employers for pay discrimination. Since then, pay discrimination litigation and legislation enacted by state and local governments have continued to advance pay equity.

Indeed, nearly every state has enacted a law prohibiting gender-based wage discrimination. And many state laws are more stringent than the Equal Pay Act, requiring pay differences to be justified by factors other than sex, related to the job and consistent with business necessity. States like California, New York, New Jersey and Oregon have expanded pay equity laws to include other protected categories such as race, ethnicity, age and religion.

Globally, pay equity is also gaining attention, with increasing action across various regions. For example, 2023's European Union Pay Transparency Directive requires EU member states to implement laws by June 2026, mandating companies with over 250 employees to report gender pay gaps annually.

Similarly, Brazil's Ministry of Labor and Employment has issued guidelines for compliance with its pay equality law, which requires employers with 100 or more employees to publish pay transparency reports twice a year. Employers that have global operations should be aware of these developments and make sure they are compliant.



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State Action on Pay Equity

With federal progress limited and often stalled, states have taken the lead in addressing pay equity, with developments continuing in several states this past year. Initially, reforms focused on lifting the secrecy around wages and prohibiting employer retaliation against employees for sharing their pay. Efforts have expanded to include salary history bans, which aim to ensure that employees start new jobs with a clean slate, unburdened by low pay rates that may have been influenced by discriminatory forces.

While lifting the veil on the secrecy of employee wages and prohibiting employer adverse action against employees for sharing their wages was significant, transparency laws have now gone even further. Pay transparency legislation, which has passed in multiple states, requires disclosure of salary ranges and benefits in job postings. Additionally, mandated reporting of pay information is gaining momentum, and in the not-so-distant future, employers may be required to conduct and disclose pay audits, either publicly or to state agencies.

Important Pay Equity Legislation

The following list highlights important pay equity legislation, summarizing key legislative developments from 2024.

Salary History Bans

Laws prohibiting disclosure of pay rates have been on the books in many states since 2016. The year 2024 saw a few remaining states and localities enact similar laws.

- **Lehigh County, Pennsylvania:** This county, which includes Pennsylvania's third-largest city, Allentown, passed an ordinance that prohibits employers from asking job applicants about their current or past salary. It became effective on June 1.
- **Washington, D.C.:** The capital's new wage transparency law prohibits private sector employers from screening prospective employees based on wage history or seeking their wage history. It became effective on June 30.
- **Oregon:** The part of Oregon's Equal Pay Act that banned salary history inquiries went into effect in 2017, and on Jan. 1, 2024, the law began allowing employees to file civil suits for alleged violations.

Pay Transparency: Job Postings and Disclosure

States have increasingly enacted pay transparency laws since Colorado led the way in 2021 by requiring both public and internal job postings to include the hourly wage or salary range, along with a description of benefits.

The trend continues with the newest entrants in 2024:

- Washington, D.C.: This law requires disclosure of a minimum and maximum salary in public job listings, and disclosure of healthcare benefits information before the first interview. It became effective on June 30.
- Hawaii: This law requires employers with 50 or more employees to include the hourly rate and salary ranges in job postings. It became effective on Jan. 1.
- Maryland: This law requires disclosure of wage ranges and benefits in job postings for positions performed in Maryland. It became effective Oct. 1.

States also continue to adopt and revise rules and laws as they navigate this evolving legal landscape. For example, Colorado amended its pay transparency law and adopted new rules, requiring employers to notify employees of all job opportunities, disclose information about new hires and meet additional job posting requirements, all of which became effective on Jan. 1.

Several states, including Illinois, Minnesota, Vermont, New Jersey and Massachusetts, have passed salary transparency laws that will take effect in 2025. These laws generally require employers to disclose pay ranges and benefits information in job postings, with specific requirements varying by state and employer size.

Additionally, some states have continued to expand their salary transparency laws to include protections against retaliation and to prohibit pay discrimination based on more protected classes beyond sex. These include:

- Hawaii: The state law prohibits pay discrimination based on any protected class under the fair employment practices law for employees performing substantially similar work in the same establishment. It became effective on Jan. 1.
- Washington: Signed into law on March 28, amendments to the state's Equal Pay and Opportunities Act become effective July 1, 2025, and will prohibit pay discrimination based on any protected class.
- Massachusetts: Effective Oct. 29, 2025, the state will prohibit retaliation against individuals who report noncompliance with pay transparency laws or exercise their rights under the law.

Pay Data Reporting

Since 2020, California has required employers with 100 or more employees to annually

report pay data by gender, race and ethnicity. This reform is emerging as a significant trend at the state and local levels.

- Illinois: Enacted in 2021, employers with 100 or more employees, and that are required to file an EEO-1 report, must provide employee pay, demographic and other data. The data must be reported to receive an equal pay registration certificate and employers must recertify every two years. Qualifying employers had until March 24 to comply.
- Massachusetts: Enacted on July 31, employers with at least 100 employees in the commonwealth will have to file wage data reports, including demographic and pay data, or submit their EEO-1 data. The requirement takes effect Feb. 1, 2025.
- New York City: Proposed legislation would require employers with 25 or more employees to report detailed pay and demographic data to promote pay equity. If passed, it would take effect in 2025.

Court Opinions on Pay Equity

Recent court decisions have highlighted various aspects of equal pay laws and their enforcement.

Boyer v. U.S.

In *Boyer v. U.S.*, the U.S. Court of Appeals for the Federal Circuit addressed whether prior pay could justify different starting salaries for male and female employees. In March, the court held that past pay alone can be a valid factor if the employer proves it was "unaffected by sex-based pay differentials" or considered with other non-sex-based factors, like education or experience.[1]

This decision aligns with the U.S. Courts of Appeals for the Sixth, Tenth and Eleventh Circuits — but contrasts with the U.S. Court of Appeals for the Ninth Circuit, which rejects past salary as a factor under the Equal Pay Act. The Federal Circuit noted that the U.S. Courts of Appeals for the Fourth and Seventh Circuits have "held that prior pay is a factor other than sex and that, standing alone, it can justify differential treatment."

Mundell v. Acadia Hospital Corp.

In *Mundell v. Acadia Hospital Corp.*, the U.S. Court of Appeals for the First Circuit ruled in February that a doctor alleging gender-based pay discrimination under Maine's Equal Pay Law does not need to prove discriminatory intent. Rather, "liability attaches with proof that employees of one sex are being paid less than employees of another sex for comparable work in comparable jobs." [2]

Baker v. Upson Regional Medical Center

In *Baker v. Upson Regional Medical Center* in March, the U.S. Court of Appeals for the

Eleventh Circuit also confirmed that the federal Equal Pay Act does not require proof of intentional discrimination. It reaffirmed the two-step Equal Pay Act analysis.

First, the plaintiff must prove that they performed substantially similar work for less pay. Then, the burden shifts to the employer to justify the pay difference under one of the Equal Pay Act's four exceptions. A plaintiff does not need to prove discriminatory intent, but must show a genuine dispute of material fact to defeat summary judgment when combating an affirmative defense.[3]

Practical Guidance and Future Expectations

Pay equity will remain a focus for state and local governments, with expanded protections for more protected categories beyond gender. Still, challenges persist for both the workers and their employers seeking to achieve parity in pay.

For instance, artificial intelligence is projected to disproportionately affect jobs primarily held by women. Consequently, it's essential for employers to address pay equity issues to prevent disparities and limit the risk of pay equity and discrimination litigation.

Compliance Steps

To ensure compliance with equal pay laws and reduce litigation risks, employers should consider the following.

First, it is important to review compensation policies to make sure employees performing similar duties are paid equally. Pay decisions should be based on objective criteria, with any pay differences carefully documented. This process should take into account multistate operations, especially as pay transparency laws become more widespread.

Next, determine and document pay ranges by identifying the relevant laws in each state where workers are employed, including states where remote employees are located. Decide whether to apply a consistent pay structure across all locations and ensure that pay ranges are established for all positions to maintain consistency.

Pay decisions should always be grounded in documented, objective criteria. If disparities exist among employees performing similar work, address them promptly and avoid using salary history as a justification for wage differences.

To correct potential pay disparities, consider awarding bonuses or raises to reach equity. Additionally, review and update job postings to reflect accurate and equitable compensation information. Where required, develop a process to consistently include salary information in both internal and external job listings, ensuring the disclosed amounts reflect what the employer genuinely intends to offer.

Finally, train human resources and hiring staff on compliance with pay equity laws and best practices. Prepare them to address questions from both applicants and current employees about salary ranges, and make sure that recruiters comply with pay transparency requirements.

Preparing for the Future

Equal pay issues will continue to be a dominant workplace concern, so it's crucial to stay informed and take proactive measures. It is essential to stay vigilant and actively address

any issues as they arise. This involves coordinating with recruiters and regularly reviewing compensation practices to ensure they remain fair and compliant.

Conducting a pay audit is another critical step. A legally privileged audit can help identify and correct any existing pay disparities, ensuring compensation is equitable across the workforce. To prevent future pay disparities, it is important to consider systemic changes by developing formal compensation policies. Establishing standard pay ranges and guidelines can also help maintain consistency and avoid unlawful disparities in compensation.

Lastly, training managers and other decision-makers is key to ensuring compliance. Educating them on how to make pay decisions based on appropriate factors, while also ensuring proper documentation, helps to foster a culture of pay equity within an organization.

Conclusion

As we reflect on 2024 and usher in 2025, it is important to stay abreast of developments in pay equity, transparency and reporting. The legacy of Lilly Ledbetter has expanded the reach of pay equity claims, and states throughout the country continue to enact robust laws requiring pay equality.

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[1] Boyer v. United States, 98 F.4th 1073 (Fed. Cir. 2024).

[2] Mundell v. Acadia Hosp. Corp., 92 F.4th 1 (1st Cir. 2024).

[3] Baker v. Upson Regional Medical Center, 94 F.4th 1312 (11th Cir. 2024).