

# Employment Practices Liability

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## Connecticut Passes Law Requiring Employers to Disclose Salary Range to Applicants and Employees and Expands Gender-Based Pay Discrimination From “Equal Work” to “Comparable Work”

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Effective October 1, 2021, employers will be required to disclose to applicants and employees the salary ranges for positions. Significantly, the law also expands Connecticut’s prohibition of gender-based pay discrimination from requiring equal pay for “equal work” to equal pay for “comparable work.”

### Such Salary Range Provisions

Pursuant to this new law, an employer is prohibited from:

- Failing or refusing to provide an applicant for employment the wage range for a position for which the applicant is applying, upon the earliest of: (a) the applicant’s request, or (b) prior to or at the time the applicant is made an offer of compensation.
- Failing or refusing to provide an employee the wage range for the employee’s position upon: (a) the hiring of the employee, (b) a change in the employee’s position with the employer, or (c) the employee’s first request for a wage range.

The law defines “wage range” as: “the range of wages an employer anticipates 15 relying on when setting wages for a position, and may include reference 16 to any applicable pay scale, previously determined range of wages for 17 the position, actual range of wages for those employees currently 18 holding comparable positions or the employer’s budgeted amount for 19 the position.

The statute contains a private right of action for violations within two years of the violation; employees may recover compensatory damages, attorney’s fees and costs, punitive damages and such legal and equitable relief as the court may deem proper.

### Amendment To Gender-Based Pay Discrimination

As noted above, this law also expands the state counterpart of the federal Equal Pay Act. Effective October 1, 2021, the law prohibiting discrimination on the basis of sex in compensation now requires “equal pay for comparable work” as opposed to “equal pay for equal work.” Work is considered “comparable” when viewed as a composite of skill, effort and responsibility and performed under similar working conditions. When pay is differential, the employer must demonstrate that such differential is made pursuant to: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential system based upon a bona fide factor other than sex, such as education, training or experience. Said bona fide factor defense shall apply only if the employer demonstrates that such factor (A) is not based upon or derived from a sex-based differential in compensation, and (B) is job-related and consistent with business

necessity. Employers do not get the benefit of the defense where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice.

### Practical Implications

Connecticut employers should, before October 1, 2021, create wage ranges for all positions. Additionally, before posting for a new position, employers should create a wage range so that they are prepared to respond to inquiries by applicants. In addition, employers should review current pay rates and job descriptions, analyze which positions constitute “comparable” positions to ensure that there are no pay differences within each position. Employers should be prepared to articulate the bona fide factors for any pay differences with knowledge that it will be the employer’s burden to prove these factors and that they warrant such pay discrepancies in the event of a claim.

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