



Equal Pay Day 2022:

Key Trends in Pay Equity

March 15, 2022

Seyfarth Shaw LLP

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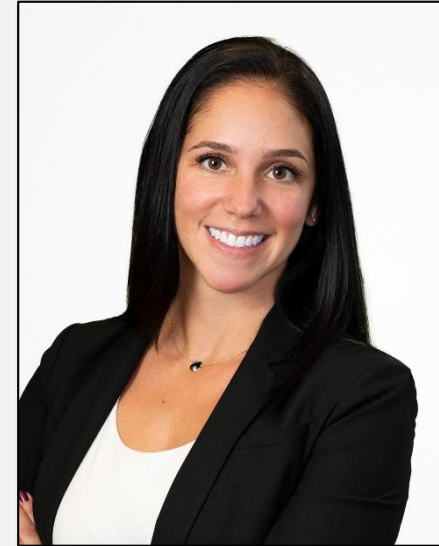
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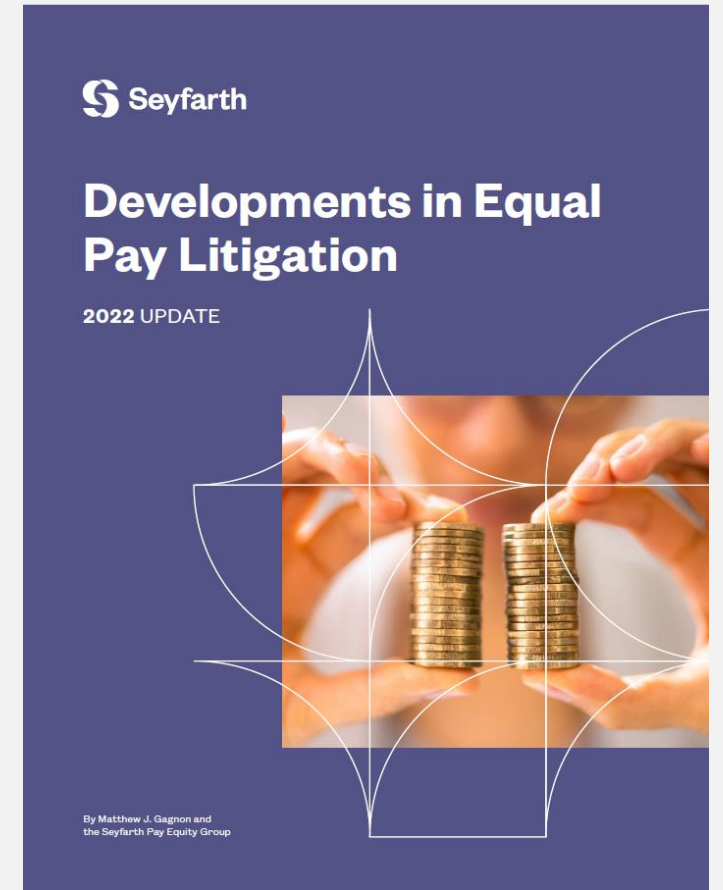
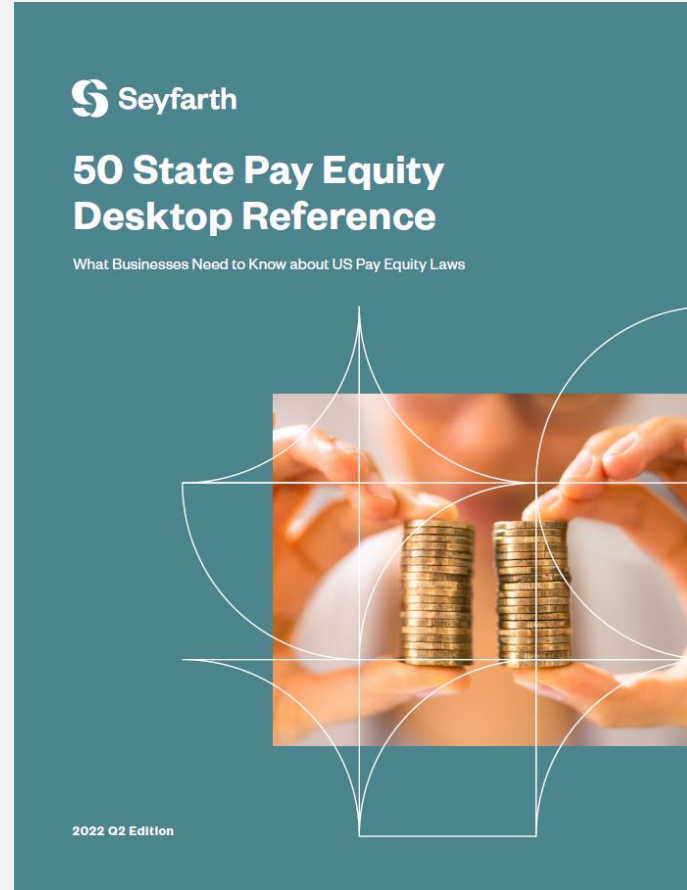
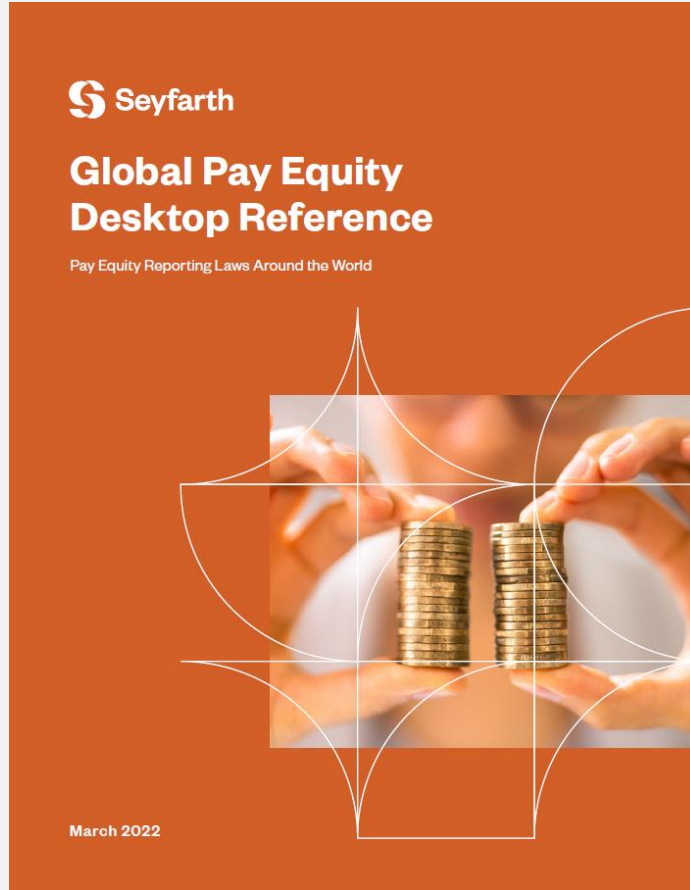


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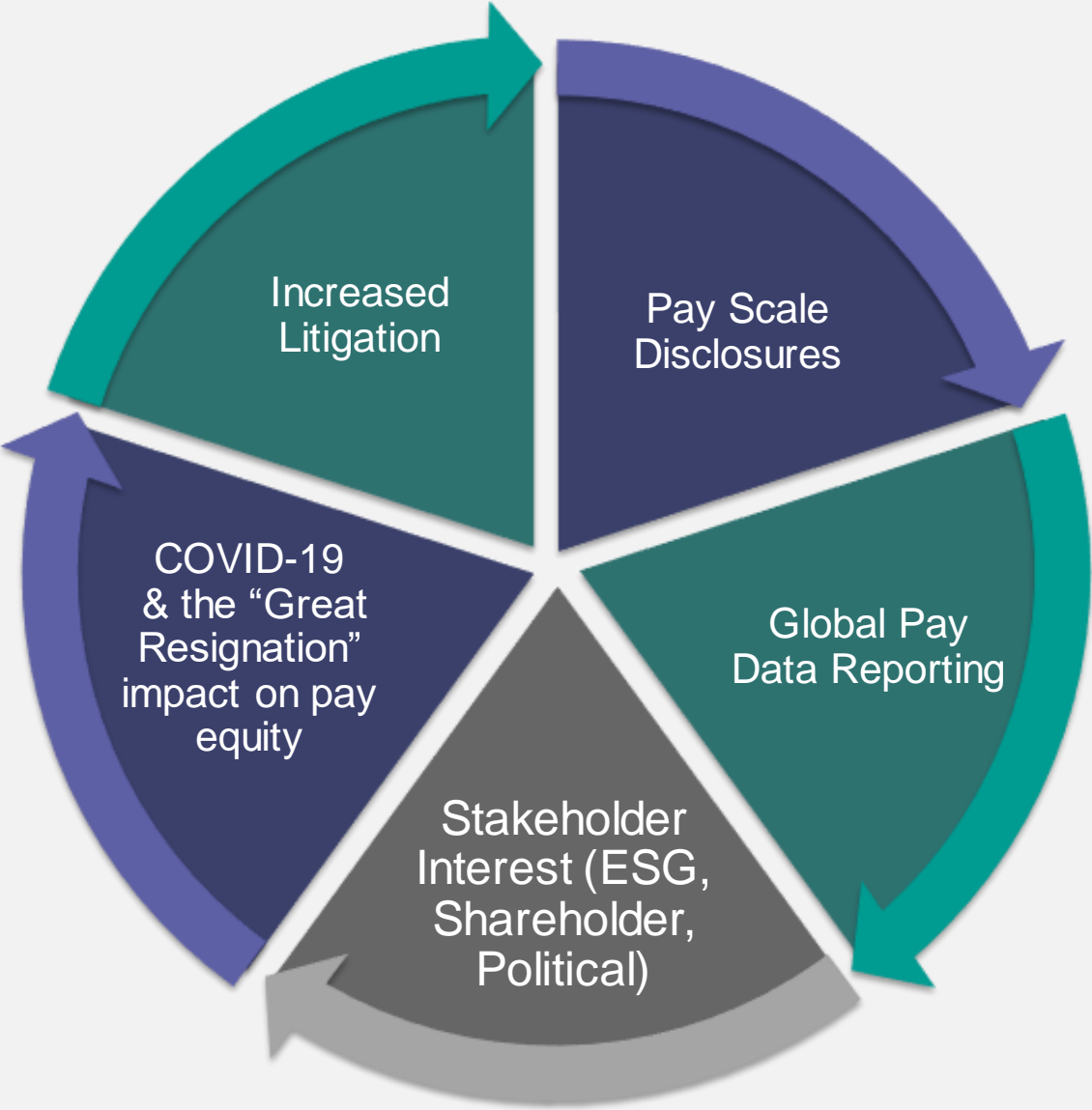


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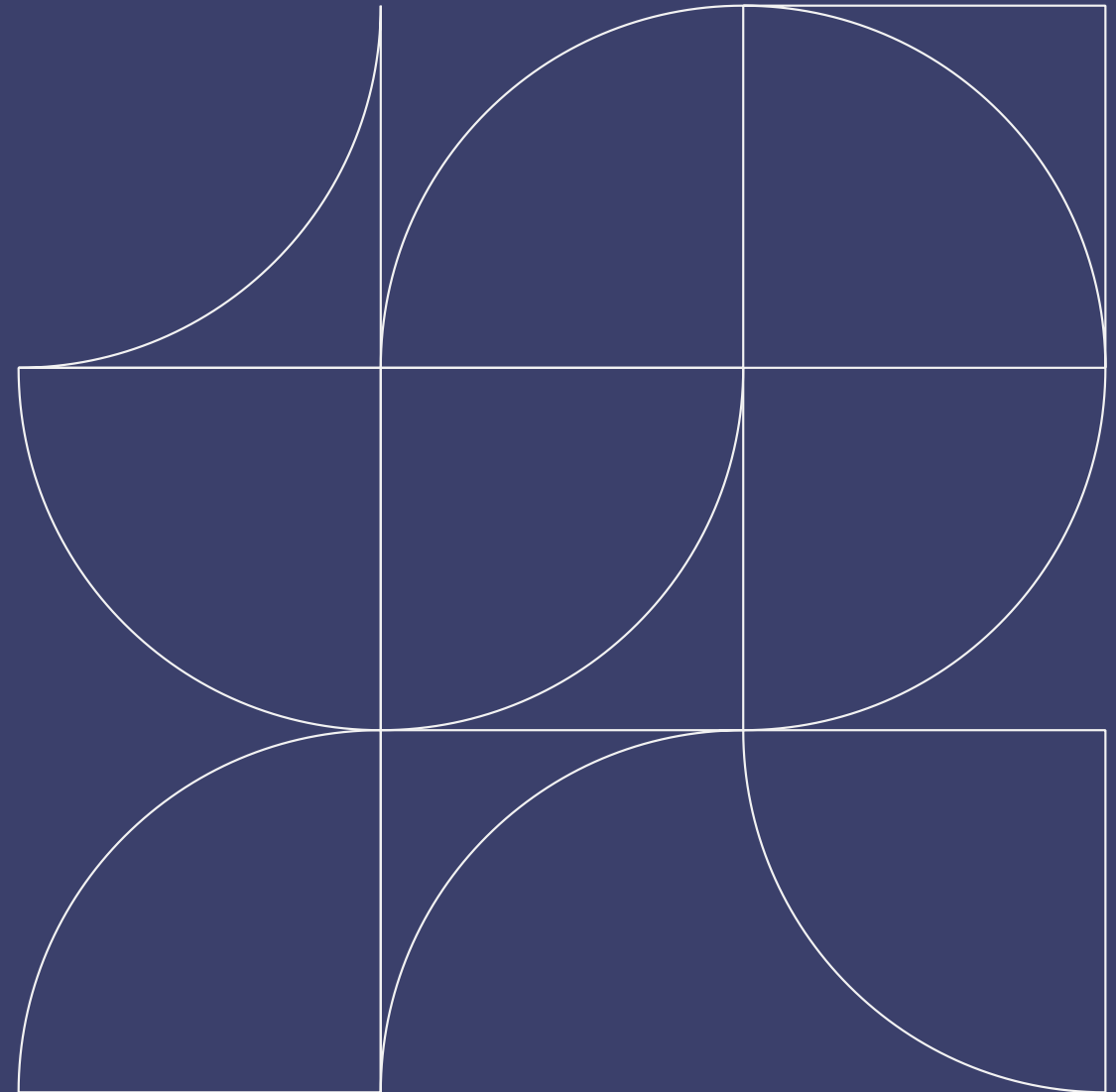
Available Today - Three New Resources



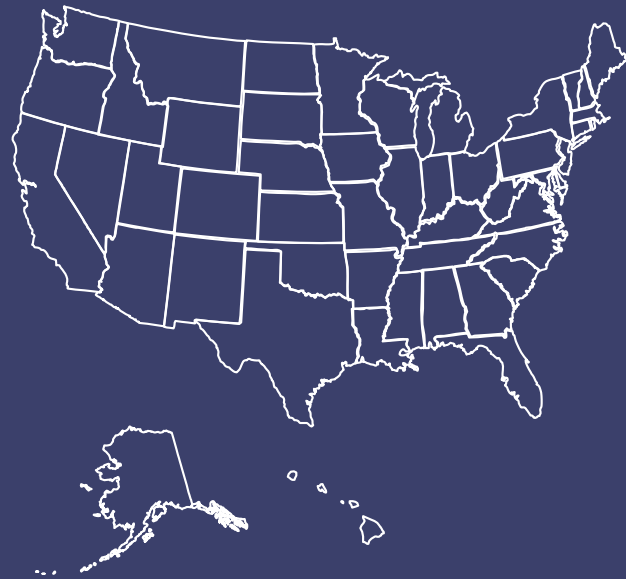
What we see in 2022 and beyond . . .



U.S. Pay Scale Disclosure Requirements



Nationwide Trend



Pay Scale Disclosure Requirements

Impacted Jurisdictions:

- California
- Colorado (*far-reaching implications*)
- Connecticut
- Maryland
- Nevada
- NYC (*effective May 15, 2022*)
- Ohio (Toledo and Cincinnati)
- Rhode Island (*effective Jan. 1, 2023*)
- Washington State

Details on U.S. Pay Scale Disclosure Laws:

Upon Request (Applicant and/or Employee)

	Timing	What Must be Provided
California*	Upon reasonable request, made after an applicant has completed an initial interview with the employer.	“Pay scale,” which means a salary or hourly wage range.
Maryland	Upon request.	Wage range (undefined).
Ohio (Cincinnati & Toledo)	Upon reasonable request, after a conditional offer of employment.	Pay scale (undefined).
Washington State*	<p><u>Applicants:</u> Upon request after initial offer.</p> <p><u>Employees:</u> Upon request after offer of internal transfer to a new position or promotion.</p>	<p><u>Applicants:</u> Minimum wage or salary for the position for which the applicant is applying.</p> <p><u>Employees:</u> Wage scale or salary range for employee’s new position.</p> <p>If no wage scale or salary range exists, provide the minimum wage or salary expectation set prior to posting the position, making a position transfer or making a promotion.</p>

* Pending legislation will likely change requirements.

Details on U.S. Pay Scale Disclosure Laws:

Affirmative Disclosure Requirements

	Timing	What Must be Provided
Connecticut	<p><u>Applicants:</u> Upon earliest of (1) applicant's request; or (2) prior to or at the time of an offer of compensation.</p> <p><u>Employees:</u> Upon (1) hire; (2) change in employee's position; or (3) employee's first request.</p>	<p>Wage range, which means the range of wages the employer anticipates relying on when setting wages for a position and may include reference to: (1) any applicable pay scale; (2) previously determined range of wages for the position; (3) actual range of wages for those employees currently holding comparable positions; or (4) the employer's budgeted amount for the position.</p>
Nevada	<p><u>Applicants:</u> Upon completion of an interview for a position.</p> <p><u>Employees:</u> For promotion or transfer to a new position if the employee has (1) applied for the promotion or transfer; (2) completed an interview for the promotion or transfer or been offered the promotion or transfer; and (3) requested the wage or salary range or rate for the promotion or transfer.</p>	<p>Wage or salary range or rate.</p>
Rhode Island	<p><u>Applicants:</u> Upon request. Employer should provide the wage range prior to discussing compensation.</p> <p><u>Employees:</u> Upon (1) hire; (2) when employee moves into a new position; or (3) employee's request.</p>	<p>Wage range, which means:</p> <p><u>Applicants:</u> The wage range the employer anticipates relying on in setting wages for the position and may include reference to any applicable pay scale, previously determined range of wages for the position, the actual range of wages for those currently holding equivalent positions, or the budgeted amount for the position, as applicable.</p> <p><u>Employees:</u> May include reference to any applicable pay scale, previously determined range of wages for the position, or the range of wages for incumbents in equivalent positions, as applicable.</p>

Details on U.S. Pay Scale Disclosure Laws:

On Job Posting

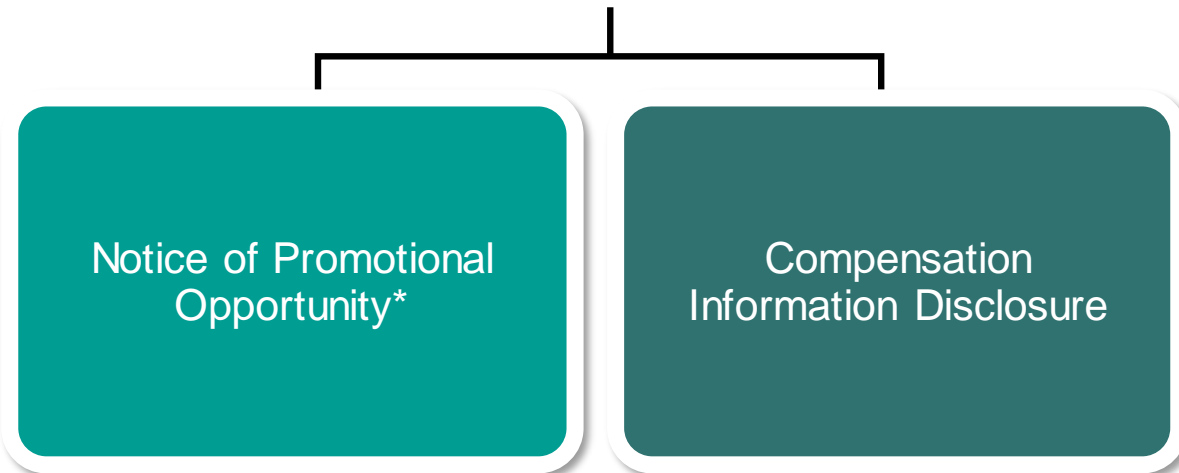
	Timing	What Must be Provided
Colorado	<p>On job posting.</p> <p>Notice of a promotional opportunity must be made to all employees for whom it may be a promotion, on the same calendar day; and sufficiently in advance of the hiring or promotion decision that employees receiving notice may apply. There is an exception where an employer continuously -- at least once per month -- either (1) hires for a specific position that would qualify as a promotional opportunity for any current employees, or (2) automatically promotes employees in an in-line job progression upon completing set requirements (e.g., a certification or number of service hours): Such an employer may provide a single notice of such promotional opportunities, rather than a notice for each individual promotion.</p>	<p><u>Compensation Information Posting Requirement:</u> For roles that will be CO based, and for remote roles that could be performed in CO, employers must include: (1) the hourly rate or salary compensation (or a range thereof) that the employer is offering for the position; (2) a general description of any bonuses, commissions, or other forms of compensation that are being offered for the job; and (3) a general description of all employment benefits the employer is offering for the position.</p> <p><u>Promotional Opportunity Notice Requirement:</u> Employers must post or otherwise notify CO employees of all job vacancies whether such vacancies exist in CO or elsewhere, and whether or not any CO employee is qualified for the job. The notice must be in writing and can be made by any method(s) reaching all employees. The definition of promotion is broad, applies to any opportunity that could be a promotion for any employee within the organization (including potentially world-wide roles), and includes in-line, career progression promotions. There are some exceptions to this requirement for confidential searches, certain automatic promotions, and temporary, acting, or interim roles.</p> <p><u>Record Retention Requirement:</u> Employers must keep records of job descriptions and wage rate history for each employee for the duration of the employment plus two years after the end of employment.</p>
NYC	<p>On advertisement for a job, promotion or transfer opportunity.</p>	<p>Minimum and maximum salary. In stating the minimum and maximum salary for a position, the range may extend from the lowest to the highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.</p>

Colorado Equal Pay for Equal Work Act

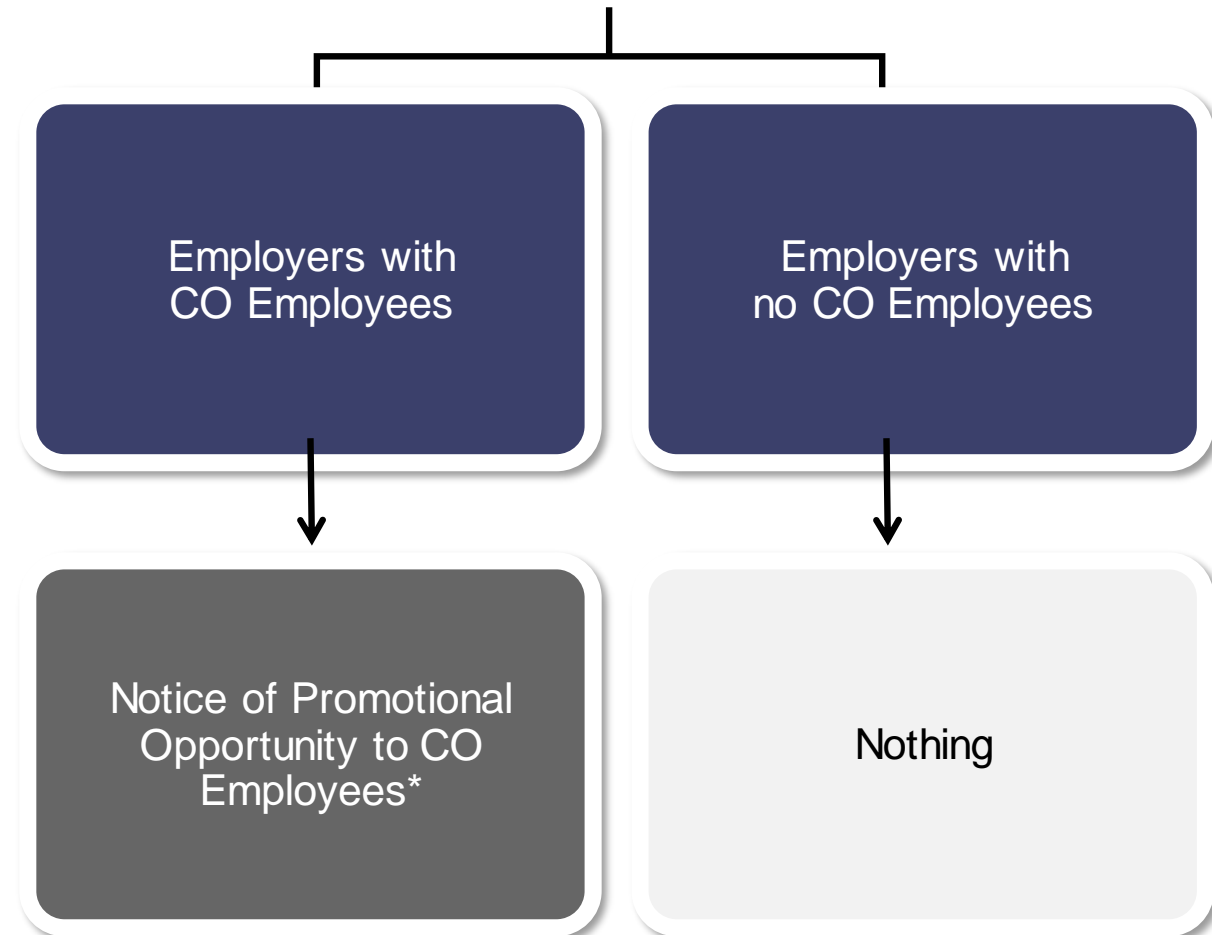
- **Requires announcement of job opportunities** made available to employees in Colorado (“Promotional Opportunity” disclosure)
- **Requires disclosure of pay information** for jobs in Colorado and remote jobs that can be performed in Colorado (“Compensation Information” disclosure)
- **Record retention requirement**

When is Posting/Notice Required in Colorado?

Jobs in CO and Remote Jobs that Could be Performed in CO



Jobs Outside of CO



* But see exceptions for entry-level roles, confidential searches, and temporary roles

What Information Must Be Disclosed in Colorado?

Compensation Information Disclosure

- Hourly rate or salary compensation range;
- General description of any bonuses, commissions, or other forms of compensation being offered for the job; and
- General description of benefits

Notice of Promotional Opportunity

- Job title;
- Means by which the candidate may apply for the position; and
- When applicable (*i.e.*, for jobs to be performed in Colorado and remote jobs that could be performed in Colorado), compensation information must be included as well

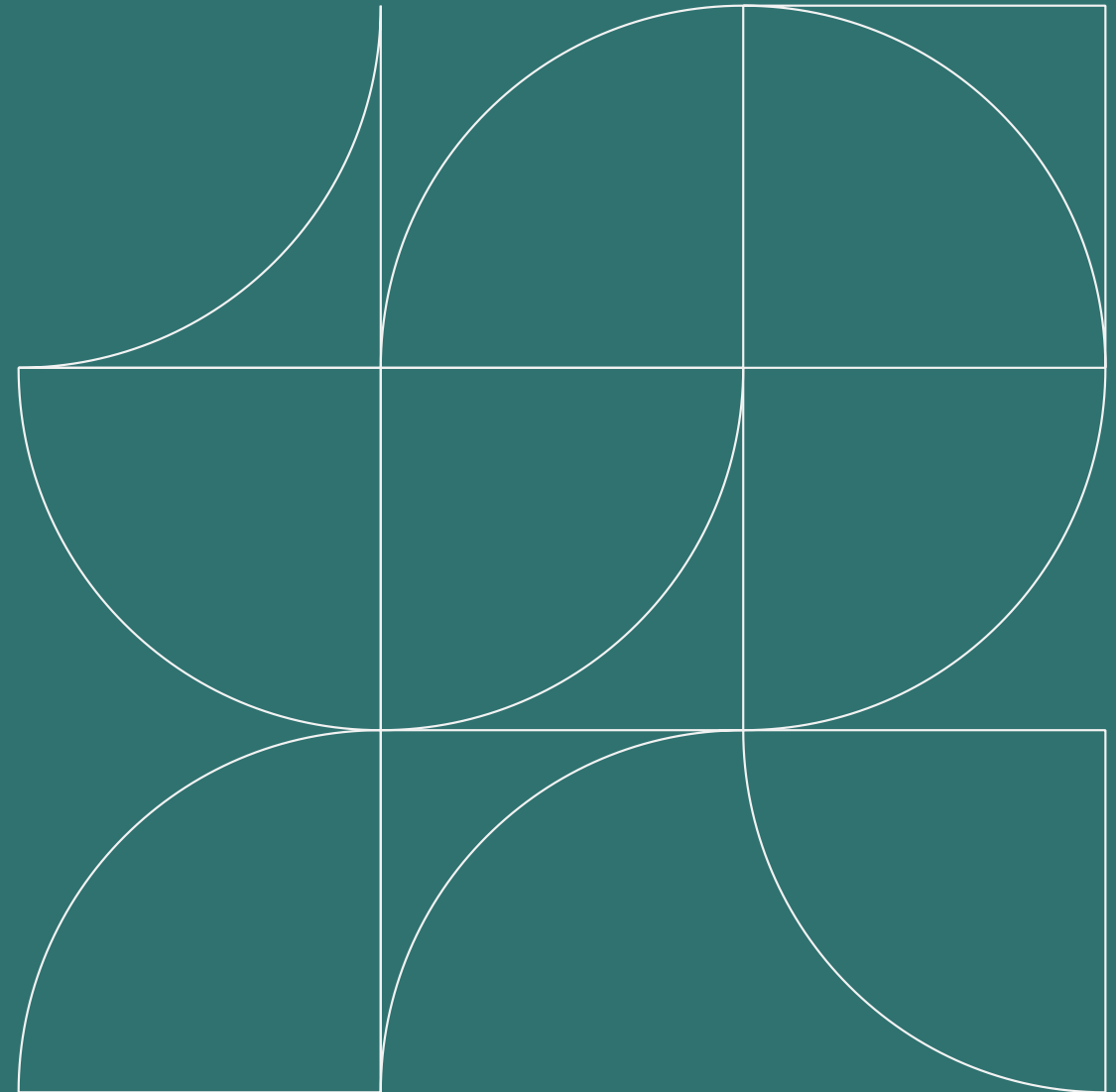


FOR HIRE

Continuing Trend of Pay Scale Disclosure in Job Posting

- **New York City** (*effective May 15, 2022*)
 - Makes it an unlawful discriminatory practice for an employer, employment agency or employee to advertise a job, promotion or transfer opportunity without including the minimum and maximum salary for such position in the advertisement
 - Lowest to highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity
 - Applies to NYC employers with four or more employees
 - Typically count employees globally
 - Does *not* apply to job advertisements for temporary employment at a “temporary help firm” (e.g., temporary agency)
 - Complaint with NYCCHR or private right of action
- **Pending Legislation**
 - California (SB 1162)
 - Washington State (SB 5761)

Global Pay Data Reporting





Global Trends Target Transparency

- US trend is a focus on salary history bans and pay scale disclosure, not seen as much globally
 - Ontario, Canada Pay Transparency Act prohibits asking candidates about past compensation
 - EU Commission Pay Transparency Directive will have a requirement to disclose pay ranges
- Global trend focuses on transparency
 - Many global laws include a requirement that reports and/or statistics be published or shared with employees
 - US starting to embrace the transparency aspect with pay scale disclosure laws and pay reporting laws

Global Pay Equity Reporting Requirement Examples

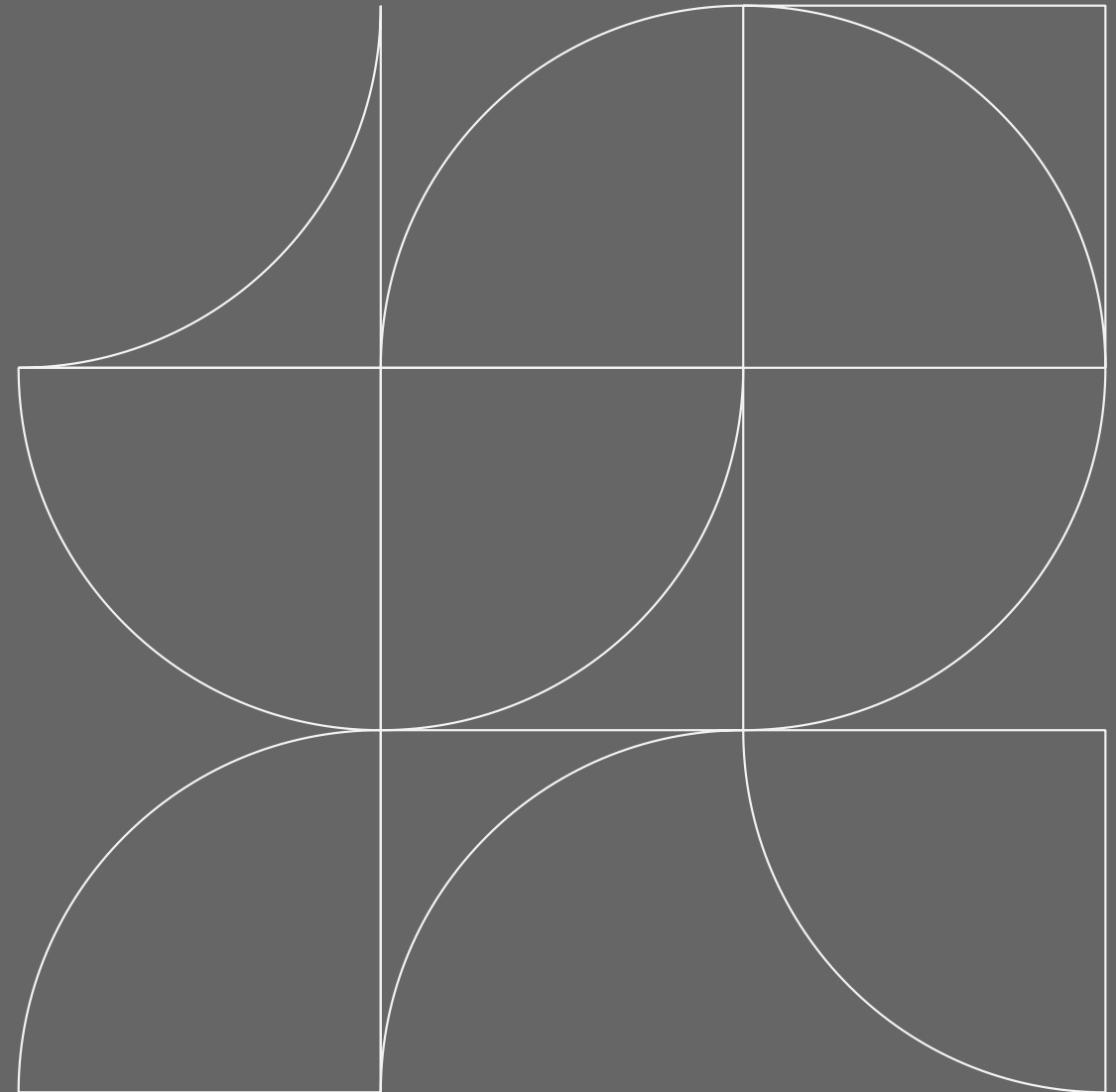
Country	Overview of Requirement
UK	Employers with 250 or more employees must report their gender pay gap figures annually. Published on government website and on employer's own website for the public to view.
France	Employers with at least 50 employees are required to calculate and publish a professional equality index to measure the pay gap between women and men. The result must be published annually, on the company's website.
Spain	Depending on company size, employers are or will become obliged to prepare an Equality Plan. As of April 14, 2021, all companies must also have a salary record with gender-disaggregated data and companies with 150+ employees must carry out a salary audit as part of the Equality Plan (progressively, companies of 50+ employees will also be included).
Germany	Employers with more than 500 employees and which are obliged to provide a management report pursuant to the German Commercial Act, are required to include a detailed report on equality and equal pay every three/five years. Published in the Federal Gazette.
Italy	Employers with over 100 employees are required to provide a report at least every two years, containing information on male and female employee remuneration. The report must be shared with union representatives and the government.
Australia	Private sector employers with 100 or more employees are required to lodge reports in relation to various gender equality targets to the Workplace Gender Equality Agency.
Quebec	Employers with 10 or more employees must conduct a pay equity exercise that is shared with employees and file an annual pay equity declaration.



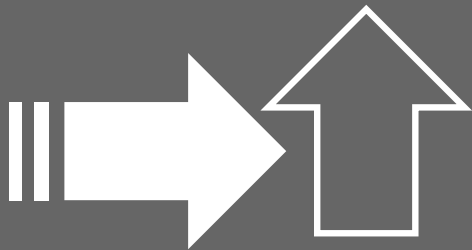
The EU Commission Pay Transparency Directive

- Proposed directive would:
 - Require all EU employers to take various measures to help foster gender pay equity
 - Give employees and candidates the right to comparative pay information
 - Require annual public gender pay gap reporting for companies with 250+ employees
 - Require disclosure of starting pay level or range to be paid to future workers – either in the job vacancy notice or before the end of the employment contract
- European Parliament and the Council of Ministers have started negotiations to finalize the directive
- Will apply to the EU's 27 member states

U.S. Pay Data Reporting



Push Toward Greater Transparency



Pay Reporting the U.S.

- Trend is greater transparency around pay equity in the United States
- States beginning to adopt pay data reporting laws, requiring disclosure of employee compensation and demographic information
 - California
 - Illinois

California Pay Data Report



- Second year of California's Pay Data Report collection is underway
 - Reports are due by April 1, 2022
 - No deferrals this year
- Employers Subject to EEO-1 Filing Obligation w/ 100 Employees and **ANY** employees working in or reporting to California establishments
- Reminder of key differences from EEO reporting:
 - W-2 Box 5
 - Hours paid even if not worked
 - Separate reports for each legal entity
- More information about CA Pay Data Reporting is available at: <https://www.dfeh.ca.gov/paydatareporting/>

California Pay Data Report – Changes for 2021 Reporting Year



- Updated pay bands from the Bureau of Labor Statistics
- New registration process
 - Person who completes pay data report can view certified report submitted
 - Must register individual completing report and employer
- Updated user interface to submit employer data by responding to series of prompts in portal

New Bill on the Horizon: SB 1162



- **(1) Pay Data Reporting**
 - Within each job category, employers must report, for each combination of race, ethnicity, and sex, *the mean and median hourly rate*
 - Penalties of \$100 per employee for failure to file
 - Employer's pay data report to be published online
- **(2) Salary Information**
 - Pay scales must be included in job postings
 - Employees may request to know the pay scale for their job position
- **(3) Job Openings**
 - Employer must publish or announce all promotional opportunities (actual or anticipated vacancies) and the pay scale for the position to all current employees on the same calendar day and before making a promotional decision

Illinois

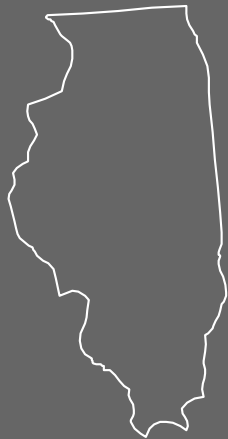
Equal Pay Registration Certificate



- Private businesses with more than 100 employees in the state of Illinois, who are required to submit EEO-1 report, must apply to the Illinois Department of Labor (IDOL) for an Equal Pay Registration Certification (EPRC).
- Businesses must provide IDOL with contact information and will be assigned a deadline.
 - Notices were sent to employers with May 24, 2022 & June 22, 2022 deadlines to apply
 - Future notices will go out to employers on a rolling basis
- The due date will remain the same for subsequent filings that will be **required every other year.**
- Response to Submission
 - IDOL will grant or deny application within of 45 days of receipt
 - 30 days to cure deficiencies

Illinois

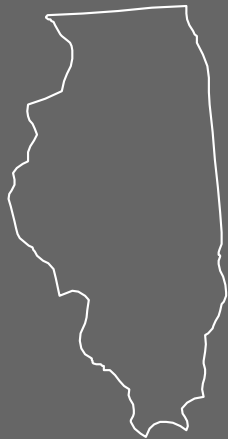
Equal Pay Registration Certificate



- **Application Components**
 - **(1) Wage Records**
 - EEO-1 Report
 - Employee List
 - **(2) Equal Pay Compliance Statement**
 - Statutory Compliance
 - Lack of Wage Disparity
 - No Sex-Based Personnel Decisions
 - Wage Disparities Addressed
 - Share information regarding frequency of wage evaluations
 - Information regarding the approach for evaluating wages
 - **(3) Filing Fee (\$150)**

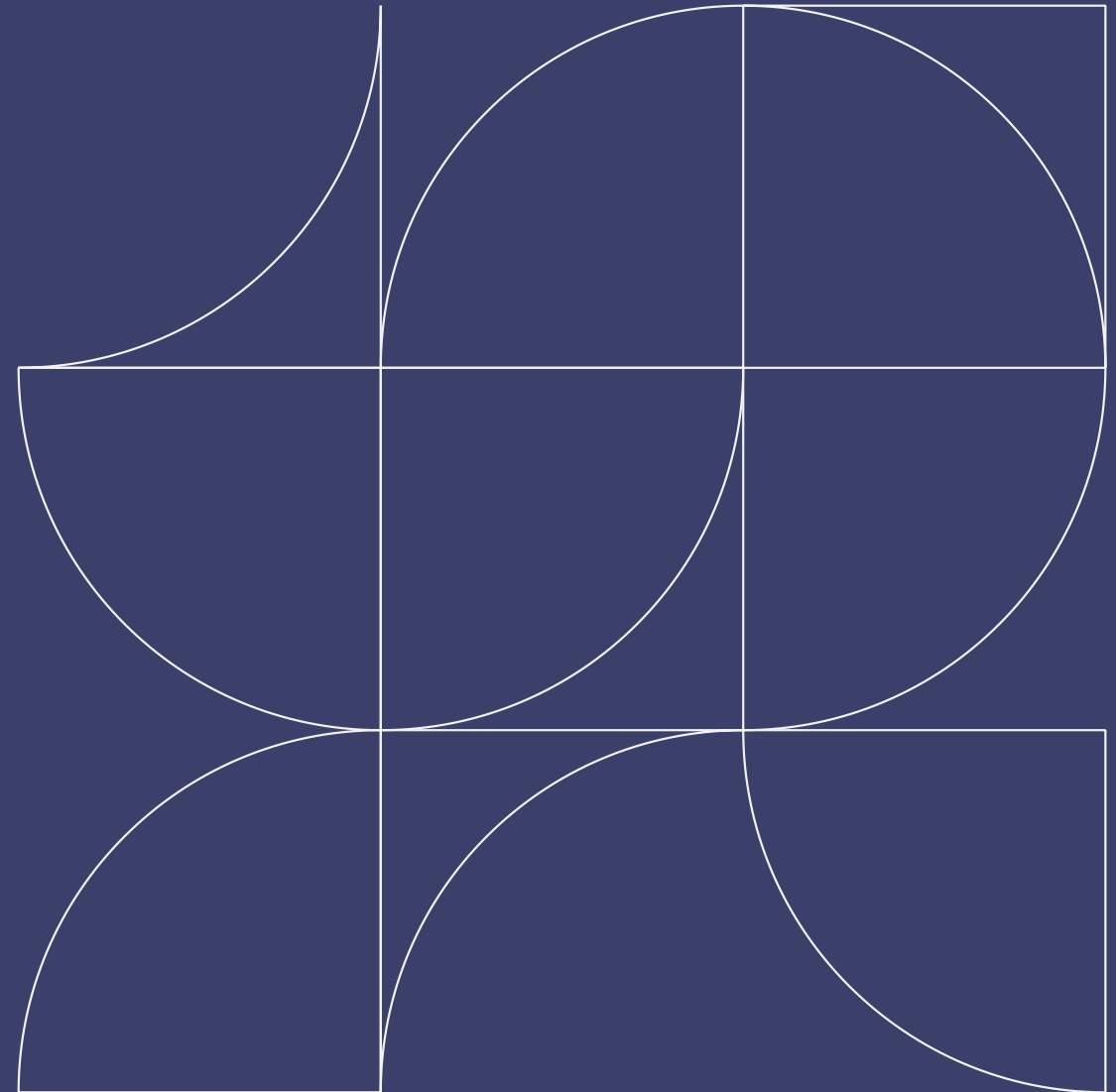
Illinois

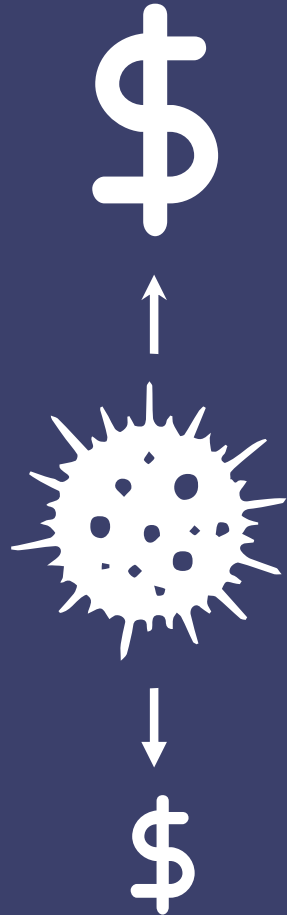
Equal Pay Registration Certificate



- **Accessibility of EPRC Application Data**
 - Employees of an employer will receive anonymized data regarding compensation for others in their same job classification or title upon request to IDOL
 - *Individually Identifiable Information*
 - Data associated with specific employee or business is **confidential** and is not subject to an Illinois FOIA request.
 - Such data may be shared with IDHR or the Office of the Attorney General
 - *Aggregate Data* may be compiled by IDOL and shared publicly
 - IDOL's decision to issue, not issue, revoke or suspend an EPRC is **public information**
- **Penalties**
 - Falsification or misrepresentation of data may result in:
 - Suspension/revocation of certificate
 - Fines of \$10,000

COVID-19 & the Great Resignation: Impact on Pay Equity

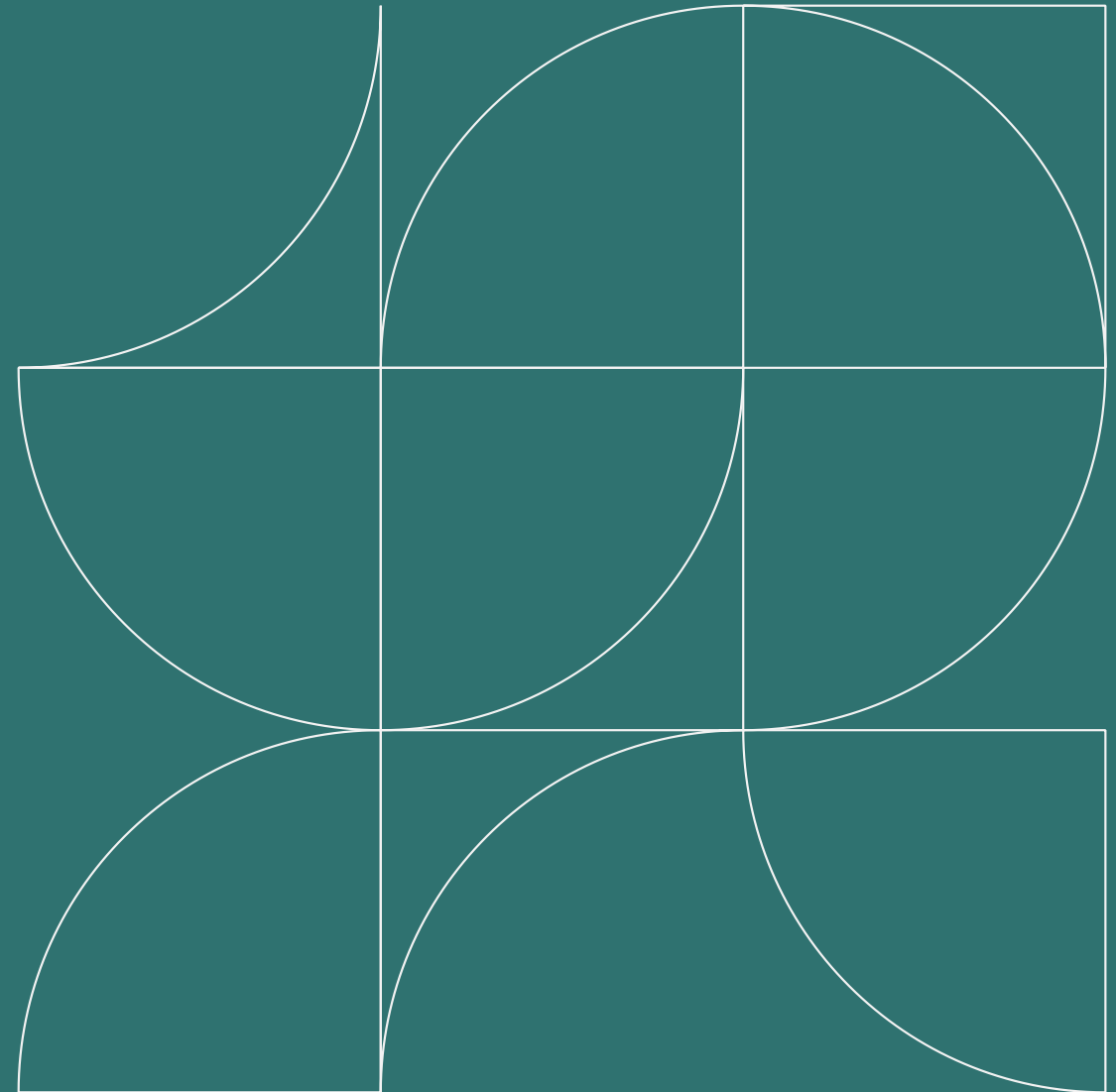




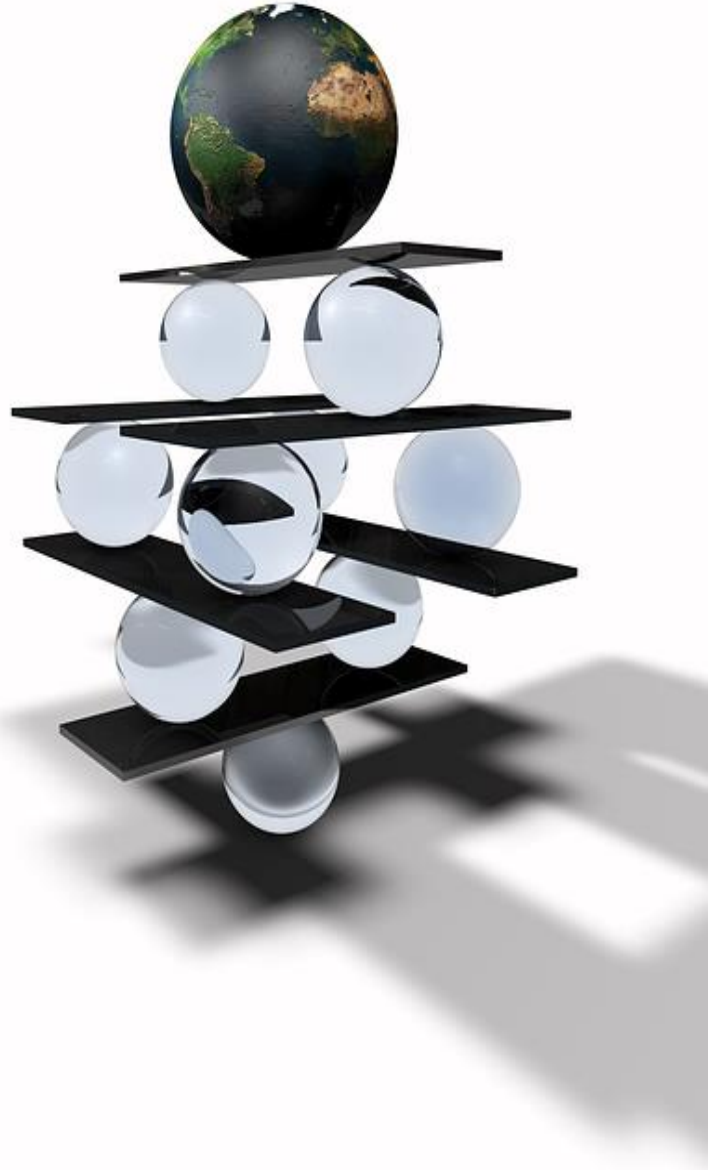
COVID-19 & the Great Resignation: Impact on Pay Equity

- Current climate is forcing employers to come up with creative solutions to attract and retain talent but there could be unintended pay equity consequences
 - Sweeping changes to your workforce can easily throw off pay equity
 - Your efforts to replace talent or retain talent can also impact pay equity
 - Offering sign on or retention bonuses
 - Paying higher salaries to attract and retain talent due to market conditions
 - Tenure now having a negative effect on pay?
 - Exacerbated by reduction or elimination of increases and bonuses for existing employees?
 - Remote work and geographic differentials

Key Takeaways for Employers



Develop a Compensation Strategy



- Consider the organization's transparency strategy
 - What will it share? When? To Whom?
 - It's about more than reacting to external stakeholders.
- Consider impact of certain state laws across the organization
- Proactive pay analyses, prepared under privilege
 - Be strategic keeping in mind often applicable laws (e.g., Illinois, by county)
 - What are the relevant factors that impact pay
 - Are they available electronically? If not, how do you get there over time?
 - Do you have a compensation structure that allows for appropriate comparison groups?
- Do you have a system for evaluating compensation on a routine basis?
 - Compa ratio? Internal peer review upon hire? Peer review at promotion?
 - Consider each component of pay and how best to evaluate (e.g., bonus, equity)
- Do you have pay ranges? If not, do you need them? What are the relevant considerations unique to your business?

**Let's keep the
conversation
going!**

- Next Webinar: March 31, 2022
 - Illinois Equal Pay Registration
- Additional Pay Equity Micro-Webinars Coming Soon...
 - Pay Transparency Issues
 - Shareholder Actions
 - Pay Equity Studies
 - Remediation Strategies

thank you

For more information please contact [Annette Tyman](#) or any member of [Seyfarth's Pay Equity Group](#) or visit:

<https://www.seyfarth.com/services/practices/advisory/employment/pay-equity.html>