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### Aloha pay transparency

On July 3, 2023, Hawaii became the latest state to require pay range disclosures in job listings. The law, which applies to employers with 50 or more employees, will become effective January 1, 2024.

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#### Background

On July 3, 2023, Hawaii Governor Josh Green signed into law [SB 1057](#), joining eight other states that require pay disclosures in job advertisements. The new law also expands Hawaii's existing equal pay requirements.

#### Pay transparency

Hawaii's new pay transparency law will require employers with at least 50 employees to disclose in job listings the expected hourly rate or salary range for the job. While the new disclosure requirements apply to most job advertisements, there are certain exceptions. In addition to the carve-out for smaller employers, the new law excludes job listings for internal transfers or promotions as well as listings for public employee positions for which salary, benefits, or other compensation are governed by a collective bargaining agreement.

The new law requires disclosure of the "hourly rate" or "salary range" that "reasonably reflects" the "actual expected compensation" for the job, but it does not define those terms. Nor does the law indicate whether the 50-employee threshold includes the employer's total headcount or only employees within Hawaii, or whether the disclosure requirements apply to remote positions or only to positions that are based in the state.

#### Equal pay

Hawaii's equal pay law ([Section 378-2.3](#) of the Hawaii Revised Statutes) prohibits any employer from discriminating between employees "because of sex, by paying wages to employees in an

establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.” Pay differentials are, however, allowed if they result from a seniority or merit system, a system that measures earnings by quantity or quality of production, a bona fide occupational qualification, or any other permissible factor other than sex.

SB 1057 extends the reach of Hawaii’s existing equal pay law to a far broader range of protected classes. It prohibits employers from paying employees in “any protected category” established under state law less than they pay other employees in the establishment for “substantially similar work.” Accordingly, pay discrimination claims may be brought based on race, sex (including gender identity or expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, reproductive health decision, or domestic or sexual violence victim status. SB1057 further broadens equal pay protections by adopting a less stringent standard that permits the comparison of employees who are performing “substantially similar” rather than “equal” work.

## In closing

Employers with employees in Hawaii should begin to review their job posting protocols to ensure that their hiring managers and any third parties they use in the recruiting process will be prepared to comply with the new pay transparency requirements on January 1, 2024. Additionally, employers should consider reviewing their pay practices or conducting a pay audit to ensure compliance with Hawaii’s expanded equal pay requirements.

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