

PAY EQUITY & SALARY HISTORY BANS

KEY CONSIDERATIONS

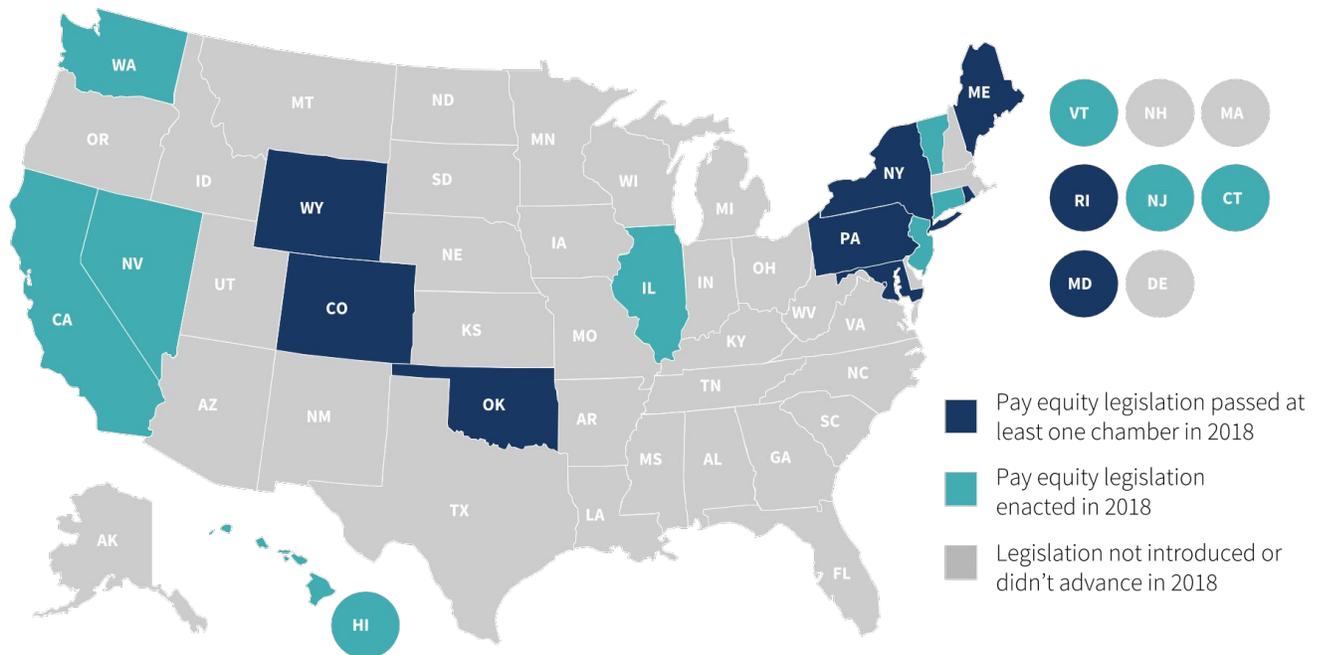
- Pay equity is critical to the professional services professions' success; recruiting and retaining highly talented individuals, regardless of race, gender, religion, sexual bias, or ethnicity, is an integral part of professional services businesses' core strategies. To address needs regarding pay equity, professional services businesses provide flex-time, mentorship programs, blind evaluations, and many other inclusion initiatives to foster a diverse and equitable workforce and executive leadership teams.
- In general, professional services are concerned with overly burdensome pay equity regulations that don't accomplish (or are counterproductive to) the underlying public policy goal. Pay equity legislation should not prohibit employers from differentiating pay based on market-driven factors because it limits ability to compete for and reward talent. One-size-fits-all mandates that do not account for employees' subject matter expertise, learned skills, and other merit-based factors fail to solve the problem. If firms are unable to provide compensation based on these factors, their ability to find and retain talent will be limited.
- Pay equity laws that require businesses to produce statistics on pay levels cause two problems: (1) significant regulatory burden and confusion for employers, and (2) taken out of context, such information has the potential to be used against the very firms that must comply with these rules. Laws that differ by state result in vastly different definitions, requirements, and metrics that employers must track and apply, resulting in high administration and compliance costs, especially for companies that operate globally. While professional services are not opposed to providing information privately to government agencies to help guide decisions and identify problems, private information should be kept strictly confidential. Making such information public harms competitiveness and will lead to baseless, expensive litigation.
- Prohibiting an employer from inquiring about salary history during the hiring process limits a firm's ability to offer market compensation to talented candidates. Such provisions harm employee mobility, violate antitrust principles, and will likely limit competitiveness by impacting firms' ability to attract talent.
- Establishing a private right of action in pay equity laws creates uncertainty for all types of employers and will lead to increased litigation costs without providing any commensurate public benefit.

ADDITIONAL RESOURCES

- "[Feminism in the U.S.](#)," poll by the Washington Post and the Kaiser Family Foundation (January 2016).
- "[High School Experiences, the Gender Wage Gap, and the Selection of Occupation](#)," report by the Institute for the Study of Labor (August 2015).
- "[State Equal Pay Laws](#)," overview by the National Conference of State Legislatures (August 2016).

2018 LEGISLATIVE STATE OF PLAY

Legislation addressing pay equity was introduced in 31 states in 2018. Many of these advanced past their chamber of origin during the legislative session, and bills in eight states were enacted (see map). Some of these bills attempt to address pay equity generally, while others address pay transparency and/or prohibit asking about salary history.



BACKGROUND

Two federal laws address pay equity: the [Equal Pay Act of 1963](#) (requires employers to pay equal wages to employees in the same establishment in positions requiring substantially equal skill, effort, and responsibility performed under similar working conditions) and [Title VII of the Civil Rights Act of 1964](#) (prohibits employers from discriminating in compensation on the basis of sex).

In 2014, states began to address the issue with the enactment of the [Paycheck Fairness Act in New Hampshire](#). Since then, a growing number of states have introduced and enacted legislation relating to pay equity every year. Localities have also begun to take action on pay equity, and in January 2018, [Philadelphia](#) enacted the first local pay equity law.

State legislation has incorporated a variety of tactics to attempt to close the wage gap. The first type requires state contractors to obtain an equal pay certificate or submit equal pay reports. The second type amends current laws to require employers to provide employees of different genders with equal pay for “substantially similar,” or “comparable” work (rather than equal work), allowing for exceptions based on merit, seniority, geographic differences, or pay systems based on quantity or quality of production. Legislation enacted in [California](#) in 2015 with these provisions requires employers to affirmatively demonstrate that differences are based upon one or more of these factors, that each factor relied upon is applied reasonably, and that the one or more factors relied upon account for the entire differential. A third component of recent pay equity bills prohibits employers from requiring that an employee refrain from inquiring about, discussing, or disclosing information about the employee’s own wages or another employee’s wages. These provisions are known as “pay transparency.” Proponents argue that if employees are allowed to discuss their wages, vast disparities may be uncovered. The pay equity law enacted in [Massachusetts](#) in 2016—considered the harshest in the nation—incorporates the provisions above and bans employers from asking candidates about their salary history. Since that time, an additional six states (California, Connecticut, Delaware, Hawaii, Oregon, and Vermont) have enacted salary history ban legislation affecting private employers