

DICTA

A hand holding a smartphone with social media icons floating around it. The background is a blurred image of a person in a grey sweater holding a red smartphone. The word "DICTA" is written in large, white, serif font with a gold outline. To the right of the word, there are several circular icons: a large red circle with a white 'X', a smaller red circle with a white 'X', and several blue circles with white checkmarks.

**DOES THE FIRST
AMENDMENT'S SPEECH
CLAUSE APPLY TO
SOCIAL MEDIA USE BY
GOVERNMENT OFFICIALS?**

THE SUPREME COURT HEARS ORAL ARGUMENT



NAVIGATING THE ERA OF PAY TRANSPARENCY: LEGAL SHIFTS AND STRATEGIC INSIGHTS FOR EMPLOYERS

In recent years, the push for greater transparency in the workplace has gained momentum, particularly in the realm of employee compensation. To address wage gaps and promote fairness, 17 jurisdictions, including both states and cities, have adopted some form of pay transparency laws, and at least 14 others are considering it. Pay transparency requirements have also been proposed at the federal level.

While the National Labor Relations Act has long protected the right of employees to discuss their wages and working conditions, such discussions have remained taboo in many workplaces, including law firms. State and local pay transparency laws are changing that landscape, even in states like Tennessee that have not yet adopted legal requirements.

“Pay transparency” refers generally to the practice of openly publishing, disclosing, or discussing pay ranges for positions within an organization. Most of the states implementing pay transparency laws require publication of the wage range in all advertisements and job postings, and others require disclosure upon request. These requirements may or may not apply to internal-only postings, and they may or may not require disclosure of the applicable wage range to current employees.

The wage range typically means the minimum and maximum annual salary or hourly rate of pay for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting. An employer is not necessarily prohibited from offering a salary outside the posted range, but such offers should be limited to unusual circumstances and the reasons for such offers well documented.

Some jurisdictions require posting a summary of benefits offered to employees, such as a 401(k) plan, health insurance, and paid time off. Additionally, some jurisdictions prohibit asking candidates for a salary history, requiring employers to make offers without knowing how the offer compares to an applicant’s current and prior compensation.

Pay transparency laws create some unique challenges for employers with remote workers, as some states, such as New York and Colorado, have taken the position that their state’s laws apply to any job that can be performed in their state, regardless of where the employer is physically located. Arguably this means that Tennessee employers recruiting for remote workers located anywhere in the U.S. could be in violation of another state’s laws if the applicable pay range is not included in the job listing. Questions remain, however, as to the enforceability of such laws on employers with no physical presence in the state.

Tennessee may not yet require pay disclosures, but with such widespread change nationally, employers should start preparing now for what will likely become a requirement in the future. Some possible steps employers can take include:

- (1) Conducting a pay audit – Employers should consider a thorough review of their existing pay for employees in each job category. Identifying and correcting existing inequities now will help manage employee relations issues later.
- (2) Establishing or updating pay ranges – Employers need to be able to attract and retain talent and maintain consistency. To do so, they need to know the market rate for similar positions in their geographic location. Once pay ranges are established, those should be compared to the pay of existing employees so that disparities can be addressed and remedied.
- (3) Developing a plan for communication – Once employees see job postings for similar jobs or obtain access to internal pay ranges, they will likely have lots of questions about their own pay. Providing context is key. Where a particular employee’s pay fits within an established pay range depends on many factors, including experience, education, certifications/licenses, and geographic location. An individual with 15 years’ experience working in San Francisco will undoubtedly be paid more than an employee in Tennessee who recently graduated from college, even if they are technically serving in the same role. Employers should be prepared to explain those differences and offer suggestions on ways an employee can increase their earning potential and move up the pay scale.
- (4) Embracing pay transparency as a positive change – When employers hear about new legal requirements, they generally approach them with significant dread. Compliance can be complicated and time consuming, and change is hard. However, offering transparency to employees can build trust between the employer and employees, ultimately increasing productivity, employee loyalty, and morale. It can also make recruiting more streamlined, as it eliminates the pool of candidates who are unwilling to accept the offered salary, saving hours of interviews, and instead attracts employees who want to work for the salary and conditions offered.

This evolving landscape of pay transparency reflects a broader societal shift toward fostering fairness and equality in the workplace. With a growing number of jurisdictions adopting or considering pay disclosure requirements, employers find themselves at the forefront of a significant transformation in employment practices. For employers navigating this shift, proactive steps are essential. By fostering an environment of openness and equity, employers can better meet the ever-changing legal requirements while also contributing to a workplace culture that values fairness, trust, and employee satisfaction.

About this column: “The cobbler’s children have no shoes.” This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact Sam Henninger at shenninger@wmbac.com.