



NATIONAL WOMEN'S LAW CENTER

Justice for Her. Justice for All.

SEPTEMBER 2022 | FACT SHEET

Progress in the States for Equal Pay

It has been nearly 60 years since the Equal Pay Act was passed, and since then, women have made tremendous strides in the labor force. However, women continue to be paid less than their male counterparts in every single state. The wage gap [hits women of color the hardest](#)—if today's gaps do not close, over the course of a 40-year career, a Latina stands to lose more than \$1 million to the wage gap in 28 states, and the same is true for Asian women in three states, for Black women in 13 states, for Native American women in 17 states, and for Native Hawaiian or Other Pacific Islander women in 13 states.¹ Across the country, the career losses amount to \$1.2 million dollars for Latinas and \$964,400 for Black women.

A robust movement to close gender wage gaps has been sweeping across the country, including an increasing focus on requiring employers to be transparent about pay. In the past few years, lawmakers have introduced equal pay legislation in over two-thirds of states and [many of these bills have become law](#).² State efforts to close the wage gap not only make meaningful change for women's and families' economic security, but they also lift states' economies. Unfortunately, in 2022, we also saw one of the first state bills actively attacking equal pay pass in Mississippi, and advocates should be on the lookout for similar harmful efforts in their state.

This fact sheet highlights states that enacted equal pay legislation in **2019, 2020, 2021, and 2022**.

BEWARE: AN UNEQUAL "EQUAL PAY" BILL

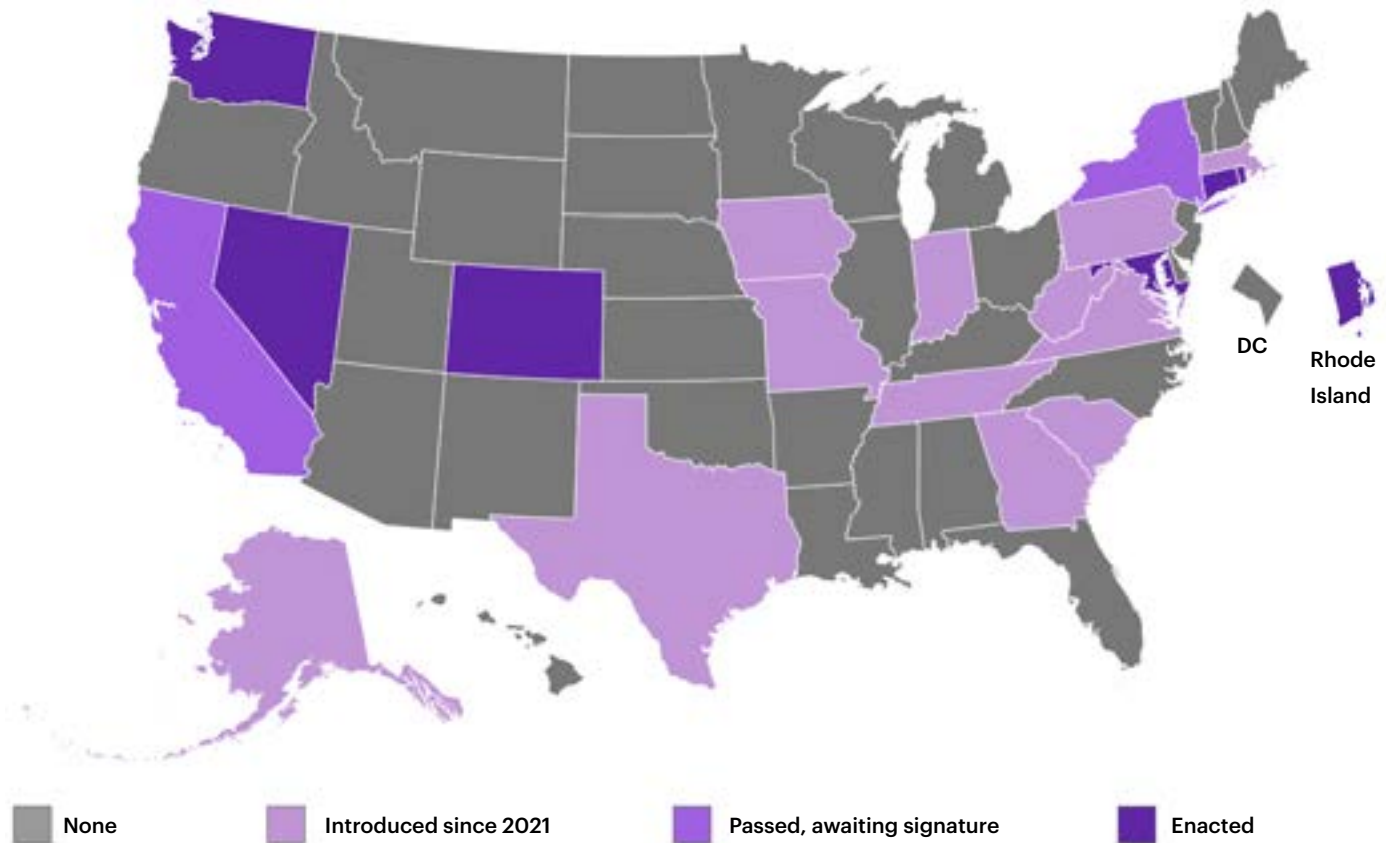
In April 2022, Mississippi [passed a so-called "equal pay" bill](#) that risks exacerbating gender wage gaps in the state.³ The bill, in effect as of July 2022, rubber stamps employers' decisions to pay women less than men for equal work and threatens to take away Mississippians more robust equal pay rights under federal law. Among many [problematic provisions](#),⁴ this legislation:

- Expressly allows employers to pay a woman less than a man for equal work based on her salary history, even though [states are increasingly banning this practice](#)⁵ because data shows relying on salary history forces women to carry pay discrimination from job to job.
- Expressly allows employers to pay a woman less than a man for equal work because of any gap in her job history, making it acceptable to pay a woman less than a man doing the same job because, for example, she took time to have a baby or care for a sick family member.
- Forces employees who seek to enforce the state "equal pay" law to waive their protections under the federal Equal Pay Act, leaving them with fewer rights than they currently have, because the protections in the new state law are weaker than under the federal Equal Pay Act.

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Salary Transparency Progress in the States



Requiring Transparency Around Salary Ranges

When employers aren't transparent about pay, gender and racial wage gaps widen and women and people of color lose out. Studies show that when job applicants are clearly informed about the context for negotiations, including the types of compensation, benefits, conditions that are negotiable, or the typical pay for the position, the gender wage gap narrows. Disclosing the salary or salary range for a position helps keep employers accountable, levels the negotiating playing field, and gives applicants and employees new tools to detect and remedy any unjustified pay disparities. Eight states have passed salary range transparency laws since 2018—four in just the last two years—and more and more states are considering passing their own.

2022

CALIFORNIA: California [passed](#) a law that requires employers with 15 or more employees to include the pay scale for a position in any job posting.⁶ If the employer

is advertising the job through a third party, then the employer must provide the pay scale to the third party, who must then include it in the job posting. The new law also requires employers to provide the pay scale for the position the employee currently holds, upon request. Under a 2017 law, employers of all sizes were already required to provide applicants with the pay scale for a position when they request it.⁷ The law is currently awaiting the Governor's signature.

NEW YORK: New York [passed](#) a law that requires employers with four or more employees and employment agencies to disclose the compensation or a range of compensation and job description, when advertising a job, promotion, or transfer opportunity that can or will be performed, at least in part, in New York.⁸ Employers may not refuse to interview, hire, promote, employ or otherwise retaliate against an applicant or current employee for exercising any rights under the law. The law is currently waiting for the Governor's signature.

WASHINGTON: Washington [amended its previous salary range transparency law](#) to require that employers with 15 or more employees disclose in job postings the wage scale or salary range for a position, and a general description of the benefits and other compensation to be offered.⁹ The law defines job posting as any solicitation intended to recruit applicants for a specific available position, including recruitment done through a third party, and postings done electronically or with a printed hard copy.

2021

CONNECTICUT: Connecticut [amended its equal pay law](#) to require employers to disclose the wage range for positions to both job applicants and current employees.¹⁰ Employers must provide a job applicant with the wage range if the applicant requests it or when the employer offers the applicant the position, whichever occurs first. Employers must provide an employee the wage range when the employee is hired, changes positions, or requests a wage range. The law defines “wage range” as the range an employer “anticipates relying on” for the position and may include pay scale, previously determined wages for the position, actual wages for comparable employees, or the budgeted amount for the position.

NEVADA: Nevada [enacted legislation](#) requiring employers to provide an applicant with the wage range for a position if the applicant has completed an interview.¹¹ Employers must provide an employee the wage range for a promotion or transfer if the employee has applied for a promotion or transfer, completed an interview, and requested the wage range.

RHODE ISLAND: Rhode Island [amended its equal pay law](#) to require employers to provide the wage range to an applicant when the applicant requests it, as well as prior to discussing compensation.¹² Employers must provide an employee the wage range when the employee is hired, changes positions, or requests the wage range.

2020

MARYLAND: Maryland [amended its equal pay law](#) to require employers to provide the salary range for a position if the applicant for that position requests it.¹³ The law also prohibits employers from retaliating against applicants for requesting the salary range for a position.

2019

COLORADO: Colorado [became the first state](#) to require employers to include in every job posting the actual hourly or salary compensation or range of compensation for the position and a description of benefits.¹⁴ The new law also requires an employer to make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees.

Requiring Employers to Collect and Report Pay Data

You can't fix what you can't measure. This is especially true for pay discrimination, which is often difficult to detect and address, because a culture of secrecy surrounding pay leaves many of those experiencing pay discrimination unaware they are being shortchanged. It would be much easier to close discriminatory wage gaps if agencies enforcing pay discrimination laws had more information about employer pay disparities by sex, race, and ethnicity and if employers undertook equal pay audits and made sure they were paying women and people of color fairly. This is why states have been pushing for pay data reporting, recognizing that when employers report pay data, it helps agencies more efficiently identify and target patterns of wage disparities and encourages employers to analyze their own pay and hiring practices and self-correct any wage gaps.

2022

CALIFORNIA: California [passed a new bill](#) that builds on the state's existing pay reporting requirement. The current law requires reporting the number of employees broken down by sex, race, ethnicity, within each job category and pay band. The new bill now requires employers to report the median and mean hourly rate for each combination of race, ethnicity and sex within each job category.¹⁵ The employer must also submit a separate pay data report for employees hired through labor contractors.

2021

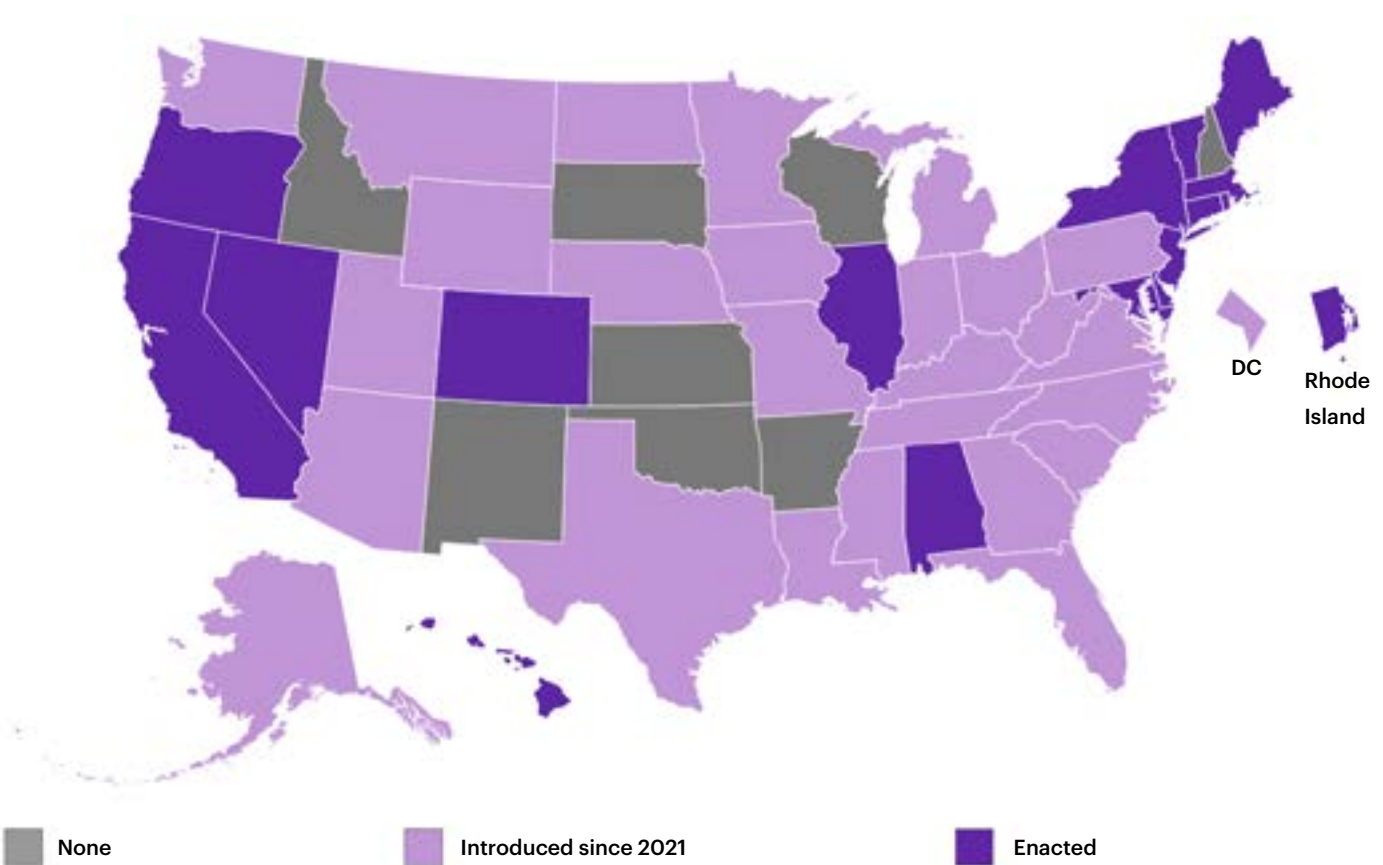
ILLINOIS: Illinois [enacted legislation](#) requiring private employers with more than 100 employees that are required to file EEO-1 reports under federal law to certify compliance with federal and state equal pay laws.¹⁶ The Illinois Department of Labor will assign each covered employer a deadline by which it must initially apply for the certificate between March 2022 and March 2024,

and each employer must recertify every two years thereafter. To obtain a certification, employers must submit the most recently filed EEO-1 and a list of all employees during the past calendar year to the Illinois Department of Labor. Employers must provide the total compensation of each employee broken down by gender, race, and ethnicity, as well as the county where each employee works, the start date of each employee, and any other pertinent information. The employer also must provide the following certifications: that the average compensation for its female and minority employees is not consistently below the average compensation for its male and non-minority employees; that the employer does not restrict employees of one sex to certain jobs or make retention and promotion decisions without regard to sex; what approach the employer takes in determining compensation and benefits; and that the

employer corrects compensation and benefit disparities when identified. Employers who fail to obtain an equal pay certification or whose certification is revoked or suspended are subject to a \$10,000 fine. Possession of an equal pay certification is not a defense against an equal pay violation, nor a basis for mitigation of damages.

CALIFORNIA: California [enacted legislation](#) requiring California employers with 100 or more employees who are required to file EEO-1 reports under federal law to submit an annual pay data report to the California Department of Fair Employment and Housing outlining the compensation and hours worked of its employees, broken down by sex, race, ethnicity, and job category.¹⁷ The first reports are due by March 31, 2021. The new law also authorizes the Department to publish aggregate reports based on the collected pay data.

Salary History Progress in the States



Prohibiting Use of Applicants' Salary History in Pay Setting

When an employer relies on a job candidate's prior salary in setting pay, past pay discrimination follows the candidate through her career. Relying on salary history in pay setting or hiring also penalizes job candidates who reduced their hours in their prior job, or left their prior job of several years to care for children or other family members. Since 2016, 16 states plus Puerto Rico have enacted legislation prohibiting employers from seeking salary history from job candidates or relying on salary history in setting pay. Governors in [several more states](#) have issued Executive Orders prohibiting the use of salary history in hiring and setting pay for state employees.¹⁸ Read more about how salary history perpetuates pay discrimination [here](#).

2021

NEVADA: Nevada [enacted legislation](#) prohibiting employers and employment agencies from seeking a job applicant's salary history, as well as relying on the salary history in considering the applicant for employment or determining the applicant's wages.¹⁹ The law also prevents employers from retaliating against or refusing to interview, hire, promote, or employ an individual for not providing their salary history.

RHODE ISLAND: Rhode Island [amended its equal pay law](#) to prohibit employers from seeking an applicant's wage history or relying on wage history in considering the applicant for employment or determining the applicant's wages.²⁰ Job applicants may still volunteer their wage history, and an employer can rely on and seek to confirm an applicant's voluntarily provided wage history to support an offer higher than the initially offered wage, unless doing so would create an unlawful pay differential. The law additionally prevents employers from retaliating against or refusing to interview, hire, promote, or employ an individual for not providing their wage history.

2020

MARYLAND: Maryland [amended its equal pay law](#) to prohibit employers from seeking job applicants' salary history or relying on an applicant's salary history in considering the applicant for employment or in determining the applicant's wages.²¹ Job applicants may still volunteer their salary history and an employer can rely on and seek to confirm an applicant's voluntarily provided salary history to support an offer higher than the wage the employer initially offered, unless doing so would create

an unlawful pay differential. The law further prevents employers from retaliating against or refusing to hire an applicant for not providing their salary history.

2019

ALABAMA: Alabama was one of only two states without an equal pay law [until it passed a law in 2019](#).²² While Alabama has not yet banned employers from seeking and relying on salary history, Alabama's new equal pay law does prohibit an employer from refusing to interview, hire, promote, or employ a job applicant, or retaliate against an applicant because the applicant does not provide their salary history.

COLORADO: Colorado [amended its equal pay law](#) to prohibit an employer from seeking job applicants' wage rate history, relying on their salary history to determine their pay, or discriminating or retaliating against an applicant for failing to disclose their salary history.²³

ILLINOIS: Illinois [amended its equal pay law](#) to prohibit employers from screening job applicants based on their current or prior wages, including benefits or other compensation, and from requesting or requiring applicants to disclose salary history as a condition of being interviewed, considered for employment, offered compensation, or being employed.²⁴ The law also prohibits employers from seeking a job applicant's salary history from a current or former employer. An employer does not, however, violate the equal pay law when a job applicant voluntarily discloses their current or prior salary history as long as the employer does not consider or rely on the applicant's disclosure when offering the job applicant employment, compensation, or in determining future wages, salary, benefits or other compensation.

MAINE: Maine [amended its antidiscrimination law](#) to prohibit an employer from seeking a job applicant's compensation from the applicant or from their current or former employer unless an offer of employment that includes all the terms of compensation has been negotiated and made to the applicant.²⁵ The employer may then inquire about or confirm the applicant's compensation history.

NEW JERSEY: New Jersey [amended its antidiscrimination law](#) to prohibit an employer from screening a job applicant based on the applicant's salary history or benefits, or from requiring the applicant's salary history satisfy minimum

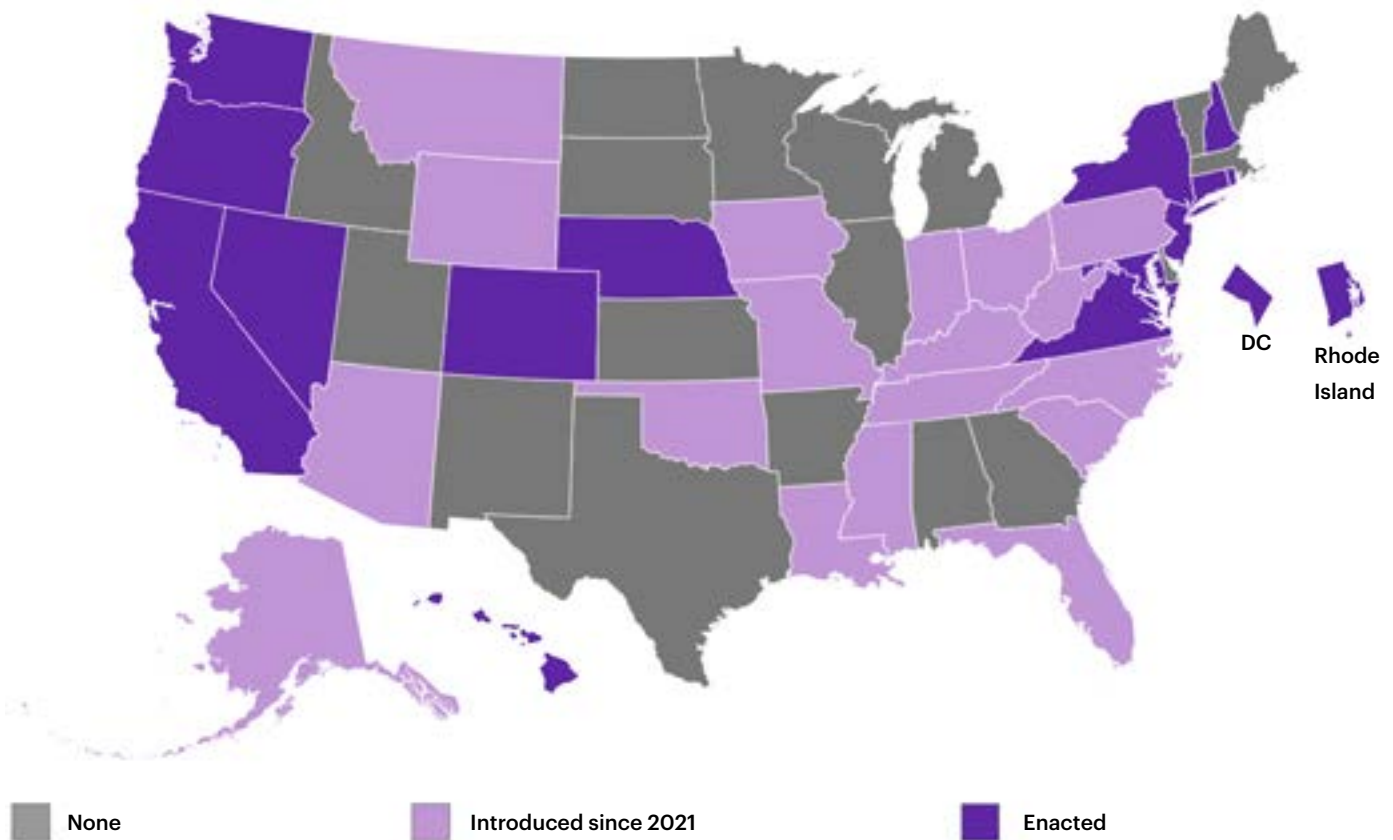
or maximum criteria. If an applicant voluntarily provides their salary history, the employer may verify their salary history and consider it in determining the applicant's pay.²⁶ An employer may also request that an applicant provide a written authorization to confirm their salary history after the employer makes a job offer that includes an explanation of the compensation package.

NEW YORK: New York [amended its equal pay law](#) to prohibit an employer from relying on a job applicant's salary history to determine whether to offer them employment or to determine their pay.²⁷ The new law also prohibits an employer from seeking a job applicant's or current employee's salary history from the applicant or employee or from current or former employer as a condition of being interviewed, being offered employment, or being employed or promoted. Job

applicants and current employees may still volunteer their salary history, but an employer may confirm their salary history only if at the time a job offer with compensation is made, the applicant or current employee responds by providing their salary history to support a salary higher than that offered by the employer.

WASHINGTON: Washington [amended its equal pay law](#) to prohibit an employer from seeking a job applicant's salary history from the applicant or from their current or former employer or from requiring that an applicant's salary history meet certain criteria.²⁸ An employer may, however, confirm the applicant's salary history if the applicant has voluntarily disclosed it or if the employer has already negotiated and made an offer of employment with compensation to the applicant.

Pay Discussion Progress in the States



Protecting Employees Who Discuss Their Pay

Pay secrecy policies and practices perpetuate pay discrimination by making it difficult for employees to learn about unlawful pay disparities. According to a [2017-2018](#) survey by the Institute for Women's Policy Research ("IWPR"), about half of all workers reported that they were either banned or discouraged from discussing their pay.²⁹ When workers fear retaliation for talking about their pay, pay discrimination can continue to grow undiscovered. Making it clear that workers have the right to ask about, discuss, and disclose their pay without repercussions is a powerful tool for discovering and remedying unequal pay. [Currently](#), twenty-one states and the District of Columbia have enacted provisions to stop employers from retaliating against employees who discuss their wages with each other, or from outright prohibiting these discussions.³⁰ Many of these protections were passed in the last several years.

2021

RHODE ISLAND: Rhode Island [amended its equal pay law](#) making it illegal for an employer to prohibit employees from inquiring about, discussing, or disclosing their own wages or another employee's wages or to retaliate against an employee for doing so.³¹ The law additionally prevents employers from retaliating against or refusing to interview, hire, promote, or employ an individual because they requested the wage range for a position.

2020

MARYLAND: Maryland previously protected employees from retaliation for asking about other employees' wages but went onto [amend their equal pay law](#) to ensure that employees are also protected from retaliation for asking about their own wages.³²

VIRGINIA: Virginia [enacted legislation](#) to prohibit employers from firing or retaliating against employees who ask about or discuss their own compensation or another employee's compensation.³³

2019

COLORADO: Colorado's antidiscrimination law previously protected certain employees from retaliation for discussing their pay, but it [amended its equal pay law](#) to also protect all employees from being discharged, disciplined, discriminated against, coerced, intimidated, threatened, or interfered with for inquiring about, disclosing, comparing, or discussing their pay. The law

also bans employers from prohibiting an employee from disclosing their pay as a condition of employment or from requiring an employee to sign a waiver or document that prohibits them from disclosing their pay.³⁴

ILLINOIS: Illinois, which already protected employees from retaliation for discussing their pay, [amended its law](#) to also make it illegal for employers to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing their compensation.³⁵ The law does permit, however, an employer to prohibit HR employees, supervisors, or other employees whose job responsibilities require access to employee wage information from disclosing such information without prior written consent from the employee whose information is sought.

NEBRASKA: Nebraska [amended its equal pay law](#) to prohibit an employer from discriminating against employees or job applicants who have inquired about, discussed, or disclosed information regarding employee compensation.³⁶ The law does not apply, however, to employees who have authorized access to information regarding other employees' compensation as a part of their job functions and disclose such information to a person who does not otherwise have authorized access to such information, unless the disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or other action.

Expanding Equal Pay Protections to Characteristics Other than Sex

Working people experience pay discrimination not only based on sex, but also on other characteristics, such as race, or disability. And some people experience intersectional discrimination based on, for example, their race and gender, or their disability and gender, combined. However, many state equal pay laws, like the federal Equal Pay Act, only address sex-based pay disparities. In the last couple of years, states seeking to strengthen their equal pay laws and close wage gaps have extended their laws to other characteristics protected by anti-discrimination laws so that employees have the tools to address the full array of pay discrimination.

2021

RHODE ISLAND: Rhode Island [extended equal pay protections](#) to the following protected characteristics: race, color, religion, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin.³⁷

2019

ALABAMA: In 2019, Alabama [enacted a state equal pay law](#), which requires employers to pay employees of different races or sexes equal pay for equal work.³⁸

COLORADO: Colorado [amended its equal pay law](#) to prohibit pay discrimination on the basis of sex, or “on the basis of sex in combination with another protected status” under Colorado’s antidiscrimination law, like race, age, or national origin.³⁹

NEW YORK: New York’s [amended law](#) extends equal pay protections beyond sex to employees and interns who belong to one or more of the protected classes under New York law, including age, race, creed, color, national origin, sexual orientation, gender identity and expression, military status, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status.⁴⁰

Allowing Fairer Comparisons of Work

The federal Equal Pay Act and many state equal pay laws have long required equal pay for “equal work.” Numerous courts have narrowly and rigidly applied the “equal work” standard to throw out pay discrimination cases based on minute or irrelevant differences in the jobs being compared. In response, states are increasingly adopting “substantially similar” or “comparable work” standards that hold the possibility of broader and fairer comparisons reflecting the reality of the modern workplace.

2021

CONNECTICUT: Connecticut [changed its equal pay standard](#) from equal pay for equal work to equal pay for “comparable work,” which is work that is comparable when “viewed as a composite of skill, effort, and responsibility” and performed under similar work conditions.⁴¹

RHODE ISLAND: Rhode Island [amended its equal pay standard](#) to a “comparable work” standard, which is work that requires “substantially similar skill, effort, and responsibility” performed under similar conditions.⁴²

2019

COLORADO: Colorado’s [amended equal pay law](#) provides that employers may not pay employees of one sex less than employees of a different sex for “substantially

similar” work based on a composite of skill, effort, and responsibility, regardless of job title.⁴³

ILLINOIS: Illinois [amended its equal pay law](#), which previously required equal pay for “substantially similar work...the performance of which requires equal skill, effort, and responsibility,” to require equal pay for “substantial similar work...the performance of which requires substantially similar skill, effort, and responsibility.”⁴⁴

NEW YORK: After its amendment, New York’s law [expanded existing pay equity provisions](#) to require equal pay not for “equal work,” but for “substantially similar” work, when viewed as a composite of skill, effort, and responsibility, and performed under substantially similar working conditions.⁴⁵

Closing Loopholes in Employers’ Defenses

Current federal law and most state laws provide that a difference in pay will not be considered discriminatory where an employer can show that the differential is due to a seniority system, a merit system, a production system, or a “differential based on any factor other than sex.” Many courts, however, have interpreted this “factor other than sex” exception extremely broadly, creating legal loopholes in which employers can justify almost anything as a factor other than sex without much scrutiny from the courts, even if there is no good business reason to pay a man more than a woman based on this factor. This makes it extremely difficult for workers to challenge pay discrimination. Several states have taken steps to strengthen their laws by limiting the employer defenses to claims of pay discrimination.

2021

RHODE ISLAND: Rhode Island’s [amended equal pay law](#) specifies that an employer may show that pay differential is lawful by proving that is based on a seniority system; a merit system; a system that measures earnings by quality or quantity of production; geographic location; a reasonable shift differential; education, training, or experience, to the extent they are job-related and consistent with a business necessity; work related travel that is regular and a business necessity; or a bona fide factor other than the protected characteristic.⁴⁶ The law also requires that this defense is only available if the employer reasonably relied on the factor and the factor reasonably explains the pay differential. Furthermore,

the law provides that an individual's wage history is not a defense to an equal pay action.

2019

COLORADO: Colorado amended its equal pay law to provide that an employer's defense to a pay differential must be based on a seniority system; a merit system; a system that measures earnings by quantity or quality of production; the geographic location where the work is performed; education, training, or experience to the extent that they are reasonably related to the work in question; or travel, if the travel is a regular and necessary condition of the work performed.⁴⁷ The law also requires that each factor be applied reasonably and account for the entire wage differential. Additionally, the law explicitly provides that an individual's salary history is not a defense to a pay discrimination action.

ILLINOIS: Illinois' [equal pay law was amended](#) so that if an employer seeks to justify a pay differential based on "any other factor other than sex" or another protected characteristic it must not be based on or derived from a differential in compensation based on sex or another protected characteristic, and must be job-related with respect to the position, consistent with a business necessity, and account for the entire differential in pay.⁴⁸

Increasing Available Relief for Victims of Pay Discrimination

Ensuring that equal pay laws provide for adequate damages or penalties is essential both to incentivize employers to lead the way in tackling the wage gap and to fully compensate victims of pay discrimination. Several states have taken steps in recent years to strengthen the amount and type of relief available to victims of pay discrimination and hold accountable employers who discriminate against their employees.

2021

RHODE ISLAND: Rhode Island [amended its equal pay law](#) to ensure that victims of pay discrimination can recover not only back pay and liquidated damages, but also compensatory damages as well as equitable relief, including job reinstatement, fringe benefits, seniority rights, and reasonable attorneys' fees and costs.⁴⁹ An employer that violates the wage history of wage range provisions of the amended law may be liable for compensatory damages or special damages not to exceed ten thousand dollars, appropriate equitable relief,

and reasonable attorneys' fees and costs.

2019

COLORADO: Colorado's [equal pay law was amended](#) to provide victims of pay discrimination up to three years of back pay and liquidated damages equal to the employee's back pay.⁵⁰ An employer is not liable for liquidated damages, however, if the employer can demonstrate that the equal pay violation was in good faith and that it had reasonable grounds for believing that it did not violate the equal pay law.

ILLINOIS: Illinois [amended its equal pay law](#) to ensure victims of pay discrimination can recover not only back pay for the wages they should have been paid had they not been discriminated against, but also compensatory and punitive damages and injunctive relief.⁵¹

MARYLAND: Maryland's [amended equal pay law](#) allows a court or the Labor Commissioner to require an employer to pay a civil penalty equal to 10% of the amount of damages owed by the employer if the employer is found to have violated Maryland's equal pay law two or more times within a 3-year period.⁵² Each civil penalty will be paid to the General Fund of the State to offset the cost of enforcing the law.

NEVADA: Nevada [amended its equal pay law](#) to provide the Nevada Equal Rights Commission (NERC) the authority to award victims of sex-based pay discrimination lost wages or other economic damages resulting from discrimination, including lost payment for overtime, shift differential, cost of living adjustments, merit increases or promotions, or other fringe benefits.⁵³ If the NERC finds that an employer with 50 or more employees committed willful pay discrimination, employers will have to pay civil penalties up to \$5,000 for the first offense up to \$10,000 for the second offense, and up to \$15,000 for the third and subsequent offense. However, if the employer engages in corrective action within 30 days, the Commission will not impose the civil penalty.

WYOMING: Wyoming [increased penalties](#) for employers that willfully engage in pay discrimination.⁵⁴ Upon conviction from a court, an employer will be punished not more than \$500 or by imprisonment of not more than six months or both.

What's Next?

State lawmakers have increasingly focused on equal pay for good reason: it is a pocketbook issue that addresses problems keenly felt by women and the families who depend on their paychecks.

State advocates and legislators are leading the charge to ensure women are paid their fair share and are recognizing the power of transparency in closing the wage gap. More states passing pay transparency laws will help not only in closing wage gaps in those states but in shifting culture and accountability for employers throughout the country. At the same time, state advocates and legislators need to be alert to efforts to undermine equal pay laws like we saw in Mississippi in 2022. The fight for equal pay is not over—we must continue to press forward.

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- 2 “Equal Pay and Pay Transparency Protections,” U.S. Department of Labor, Women’s Bureau, *available at* <https://www.dol.gov/agencies/wb/equal-pay-protections>
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- 18 “Asking for Salary History Perpetuates Pay Discrimination from Job to Job,” National Women’s Law Center, December 2020, *available at* <https://nwlc.org/wp-content/uploads/2020/01/Asking-for-Salary-History-2020-12.7.2020.pdf>
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