

Navigating New Pay Transparency Policies: A Look Across the US

September 18, 2024

Today's Webinar Host:



Samantha Greenman

Client Success Director

ComplianceHR

Who We Are



- Technology Platform
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



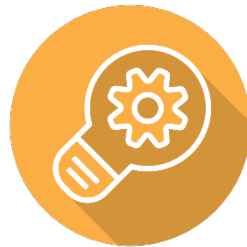
Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

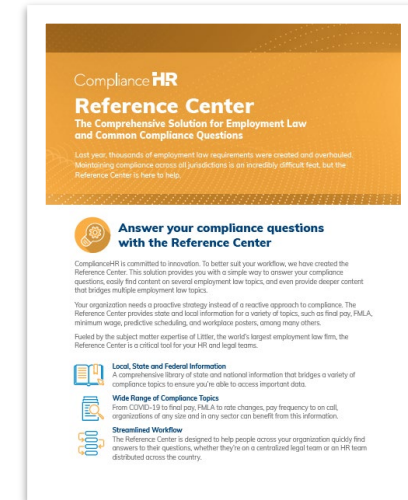
A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

Our Most Popular Solutions



PolicySmart provides you with:

- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:

- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - Leave, final pay, FMLA, minimum wage, and more

When coupled, these two solutions provide you with comprehensive compliance program support

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit the link in the Resources panel
3. Click the “Sign Up for a Demo” Button on our website

Benefits of a custom demonstration:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

- [Compliance HR - Demo & Free Trial](#)
- [State-by-State CLE Guide](#)
- [BeaconLive - How to Access Certificates](#)

Presented by:



Joy Rosenquist

Of Counsel

Littler | Sacramento, CA

jrosenquist@littler.com



Kelly Cardin

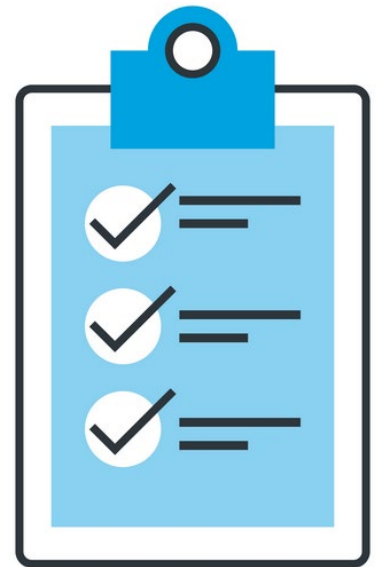
Shareholder

Littler | New York, NY

kcardin@littler.com

Introduction

- Starting with Colorado in 2021, multiple states now require employers to disclose salary ranges in pay scales
- The justification is the idea that disclosing a range will help decrease the gender pay gap
- A patchwork of state and local laws contain differing requirements and nuances that can trip up employers
- We will outline the requirements in each state and tackle real-world hypotheticals



Trends



- Aon's October 2022 Pay Disclosure Pulse Survey
 - 44% of companies plan to disclose pay ranges only when required
 - 31% of companies plan to disclose salaries nationwide regardless of laws
- Trends in passed legislation
 - Trend toward requiring disclosure in postings, as opposed to during hiring process
 - Trend toward covering remote jobs in posting requirement
 - No other states have adopted Colorado's promotional notice requirement
- Trends in proposed legislation
 - States with existing pay transparency laws passing amendments (CO, NY)
 - More laws passed each year, with HI, D.C. and IL in 2025

Wage Transparency Takes Several Forms

- Pay Scale Disclosures
 - Outright
 - Upon Request
 - After Interviews
- Pay data and demographic reporting
- Salary Inquiry Bans:
 - States and Localities differ



Salary Inquiry Bans

- In place in 21 states and D.C.
- 21 cities and counties also have bans in place
- Generally: employer cannot base salary on applicant's prior salary
- Why: Past pay discrimination is perpetuated (either consciously or subconsciously) when employers make decisions based on applicants' prior salaries.
- Each state/city ban may have limited exceptions

State of the States:

An Overview

Colorado Equal Pay for Equal Work Act



Overview

- Applies to all employers with at least one employee working from Colorado
- First state to require compensation ranges in job postings
 - Now in year four
- Only jurisdiction to require application deadlines in postings, notifying incumbents of “promotional opportunities,” and post-selection notice



Colorado: Compensation/Benefits Disclosure Requirements

Jobs that either are to be performed in Colorado, or **that can be performed remotely from anywhere**, must include in the posting:

- The compensation range for the position and descriptions of incentive compensation and benefits
- Compensation range means a “reasonable estimate” of what the employer in “good faith” believes it might pay for the position
 - Benefits descriptions can be short:
 - “Medical, dental, and vision insurance”
 - 401(k) matching, etc.
 - Other forms of compensation
 - “Eligible for annual performance bonus”
 - “+ commissions”



Washington Equal Pay and Opportunity Act



Overview

- Took effect January 1, 2023
- Employers of 15 or more employees, with at least one employee physically working in Washington
- Job postings must include:
 - Wage scale or salary range
 - General description of benefits and other compensation
- To count as a “job posting,” must include
 - qualifications such as specific knowledge, skills, or abilities; &
 - specific position



Washington State Pay Transparency

- Wage scale or salary range
 - Should extend from lowest to highest pay established by employer prior to publishing job posting
 - If not pre-existing, should be created prior to posting
 - Should be updated if the range changes



Washington State Pay Transparency

- “Other compensation”
 - If position has base pay, this can be a general statement: “commission eligible,” “bonus eligible”
 - For positions paid 100% on commission, employer must state “rate or range” offered
 - Example from policy guidance: 5-8% of net sale price per unit
 - For more complex plans, agency says it “might” be compliant to provide the range of compensation to be paid in the form of commissions
 - Positions paid on piece-rate must state agreed-upon piece rate
 - Example from policy guidance: \$0.55-\$0.75 per pound of strawberries picked



Washington State Pay Transparency

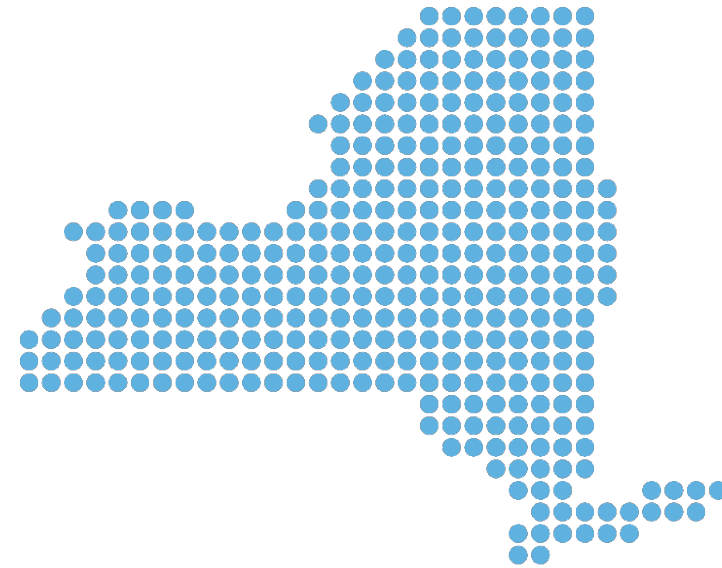
- “General description of benefits”
 - Health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits
 - Type of insurance (medical, vision, dental, life, disability)
 - Type of retirement options (401k, employer-funded, deferred compensation, other defined benefit or defined contribution)
 - Number of PTO/vacation days or hours offered
 - Number of paid holidays
 - Amount of paid sick if more than law requires
- General description must be in posting itself but more detailed information may be linked

New York State Pay Transparency Act



New York State Pay Transparency Act – Summary

- Took effect September 17, 2023
- The law requires employers to post salary ranges in job advertisements for positions that will be performed, in whole or in part, in New York, and for positions reporting to a New York-based supervisor
- The commissioner may sue employers for violations of this statute and seek remedies at law and in equity as may be appropriate



New York City Pay Transparency Act – Summary



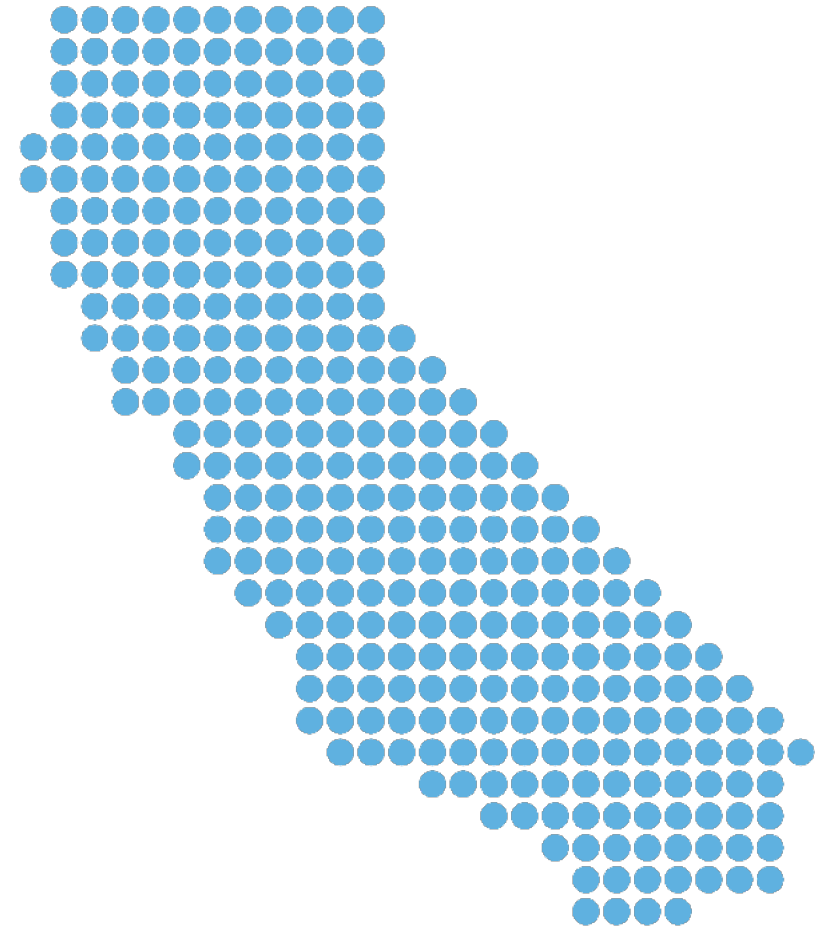
- Effective November 1, 2022 – Not preempted by state law
- The act covers ads publicized to applicants, regardless of the format. Employment agencies are covered, but not temporary help firm that assign their own employees to perform temporary work at other organizations
- Covers advertisements for jobs that can or will be performed, in whole or in part, in New York City
- The advertisement must include a good faith salary range or ranges of possible hourly rates, but not incentive comp, bonuses, or benefits

California Pay Transparency Law



California Pay Transparency: Overview

- Pay Scale in job postings
- Pay Scale to employees



Employers With 15 or More Employees

- The statute does not specify how to count the employees for purposes of coverage, but the Labor Commissioner has issued guidance
- Labor Commissioner interprets the 15-employee threshold to apply when:
 - An employer reaches 15 employees at any point in a pay period, and
 - At least one employee is currently located in California



“Pay Scale” Must Be Disclosed in Any Job Opening



- Job opening is not defined
- “Help Wanted?”
- A social media post that reads “manufacturing jobs available, apply now online”
- Compare with Washington and Colorado, where a job posting is covered if it includes qualifications or references a specific position for a desired applicant

Hawaii Pay Transparency Act

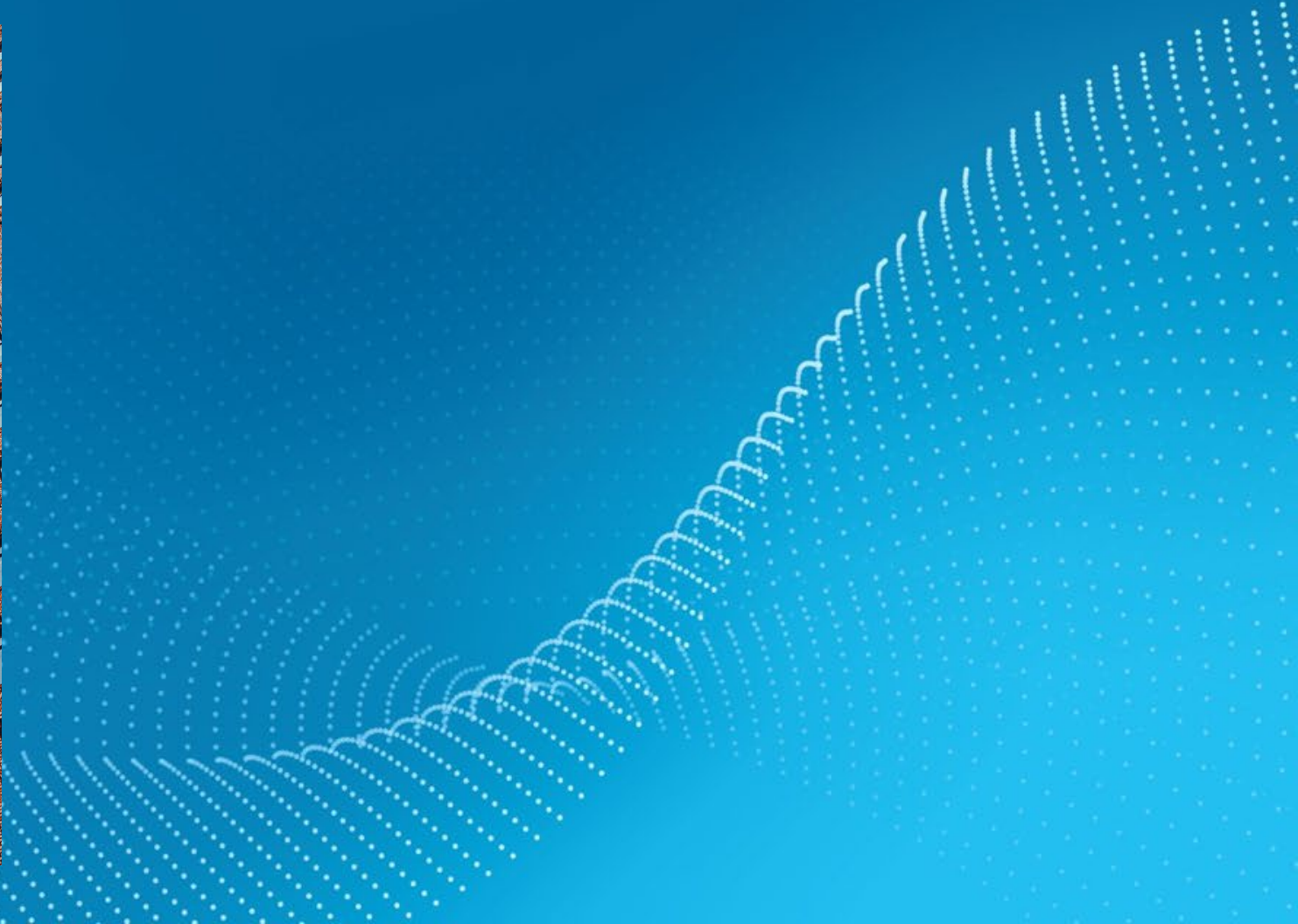


Hawaii

- Took effect on January 1, 2024
- Requires all job listings to disclose an hourly rate or salary range reasonably reflecting the actual expected compensation
- Excluded from these requirements are internal transfers or promotions, public employees, and employers with fewer than 50 employees companywide



Illinois Pay Transparency Act



Illinois

- Takes effect on January 1, 2025
- Will require employers with 15 or more employees to include a pay scale and benefits in job postings for jobs which either are to be physically performed in Illinois or if the job would report to a supervisor, office, or other work site in Illinois
- For positions that are not posted, applicants may obtain the pay scale and benefits for the position upon request and prior to any discussion of compensation or offer
- The bill provides for a 14-day cure period after receiving notice of a violation without penalty, and then a penalty of up to \$500 for the first violation; and a second cure period of 7 days for a second offense, and then a penalty of up to \$2,500 for the second violation. The third violation has no cure period and carries a penalty of up to \$10,000.

Washington D.C. Pay Transparency



Washington, D.C.

- Took effect on June 30, 2024
- Covers all employers with at least one employee in the District of Columbia
- Requires an employer to disclose the minimum and maximum projected salary or hourly pay in all job listings and position descriptions
- Requires disclosing to applicants the existence of healthcare benefits that employees may receive before the first interview
- No private right of action. Enforced by AG. Mayor may also assess fines \$1,000-\$20,000.

Maryland: HB 649

- Takes effect on October 1, 2024
- Requires employers to disclose (internal and external postings) wage range and a general description of benefits and any other compensation offered.
- The bill includes “board, lodging, or other advantage provided to an employee for the convenience of the employer” in its definition of wages.
- Penalties would range from a warning letter for a first offense to a \$600 fine for a third and subsequent offense.

Massachusetts (H.4109)

- Takes effect on July 31, 2025
- Would require employers with 25 or more full-time workers in Massachusetts to disclose pay ranges in job postings
 - “Pay range” means the annual salary range or hourly wage range that the employer reasonably and in good faith expects to pay for such position at that time
 - “Posting” means any advertisement or job posting intended to recruit job applicants for a particular and specific employment position, including recruitment done directly by an employer or indirectly through a third party
 - Penalties include: warning for the first offense, not more than \$500 for the second offense, and not more than \$1,000 for a third offense. Subsequent violations carry significantly higher penalties up to \$25,000 per each offense.
- **Adds Pay Data Reporting requirement: Provide EEO-1 to state**

Vermont: H.704

- This law takes effect July 1, 2025.
- Requires employers to disclose compensation or range of compensation in job openings.
- Requires the job description to be posted, if one exists.
- Potential applicants include both current employees and the general public.
- The geographic scope is limited to jobs in Vermont or jobs that report to a supervisor, office, or worksite in Vermont.

What's an Employer to do?



Pay Transparency Laws & Virtual Work



Pay transparency laws apply to **the location where the job will be performed**

Example: if you have an applicant for a virtual position in New York, you must comply with New York law



If it's not clear for a virtual position the location from which the person intends to perform the job, include a question **asking where the applicant would intend to work**

Add this question to all positions where virtual work is possible



Can tell applicants/new hires that they would be approved to work from X location, but would need advance approval to move to another location because Company does not conduct business in all jurisdictions

Job Postings

- If the candidate volunteers their current pay, and states a minimum salary they would require to move to your company *based upon their current pay*:
 - YOUR RESPONSE: “Company does not set pay based upon wage history” and steer the dialogue to the candidate’s expectations for what they want to earn at Company”
- You **can** base pay decisions on the applicant’s salary expectations and, based on their skills, education, training, experience (or if travel is a regular and necessary part of the work performed)



**CAN DISCUSS SALARY EXPECTATIONS
(NOT BASED UPON CURRENT PAY)**



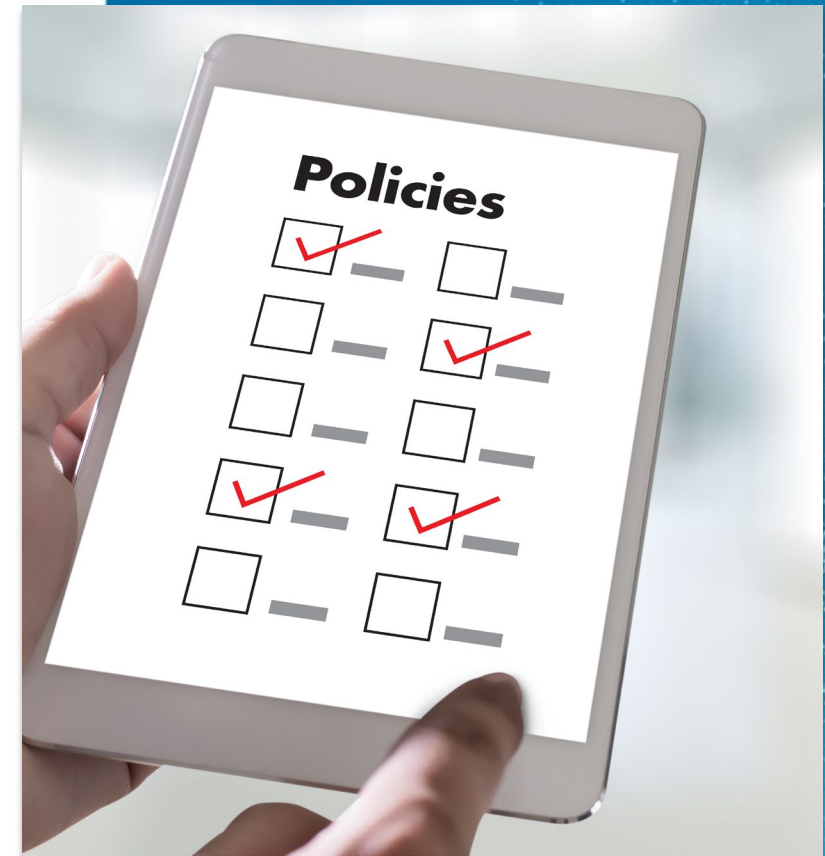
DON'T DISCUSS WAGE HISTORY

Strategies for Posting Pay Range/Pay Scale

- Post lower range initially to determine what kind of candidate the lower range attracts, if it's a low to mid-level role
- Re-post with a higher pay range if lower range does not attract qualified candidates
- Develop several levels within each position (e.g., HR Generalist I, HR Generalist II, Sr. HR Generalist) with pay ranges for each level
 - Instead of a larger pay range that applies to all roles

Practical Considerations for Employers

- Modify policies (disciplinary, compensation, retaliation, EEO, etc.) regarding disclosing and/or requesting salary information (i.e don't prohibit or discourage)
- Review compensation and compensation-related policies and guidelines for compliance with fair pay requirements.



Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit the link in the Resources panel
3. Click the “Sign Up for a Demo” Button on our website

Benefits of a custom demonstration:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

- [Compliance HR - Demo & Free Trial](#)
- [State-by-State CLE Guide](#)
- [BeaconLive - How to Access Certificates](#)

Questions?

The background is a solid blue color with a pattern of white dots. The dots are arranged in a series of concentric, overlapping arcs that create a sense of depth and movement, resembling a stylized wave or a digital signal. The dots are more densely packed in some areas and more sparse in others, creating a gradient effect.

Thank you!

The background is a solid blue color. On the right side, there is a decorative graphic consisting of numerous small white dots arranged in a series of overlapping, curved lines that create a sense of depth and movement, resembling a stylized wave or a digital signal.