



*Reach New Heights in the US Marketplace*

## **It's All About Benchmarking**

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Salary and benefits benchmarking is puzzling to everyone. Tools commonly found on the internet, such as Salary.com, will give you a very vague approximation and a very large range. Benefits represent a whole world of content that is completely obscure if you haven't worked with the US system for years. At the bottom line, you have to compare your offering with other companies you may be competing with in your field when trying to attract and retain talent. This being said, you are not going to be able to compete with a company like Google, which offers 20 weeks of parental leave at full pay (by law, they would have had to offer 12 weeks of unpaid leave). However, as a startup, you have a lot more agility than Google and we can think together outside the box.

We have been in a unique position to benchmark, as we have built competitive benefits and compensation packages to dozens of startups, and to a few large companies as well. We constantly talk to prospective employees in an effort to match their current benefits offering with their employer, which truly facilitates benchmarking.

### Benefits

It is important to note that many benefits are not mandatory under federal or state law, with the exception of Paid Sick Leave, Parental Leave and FMLA, where applicable. However, the CARES Act introduced different rules during the COVID pandemic, namely, a paid 2-week leave and additional partially paid leaves for longer periods of time, for all companies with 2 or more employees.

#### **a. Paid Time Off (PTO)**

Paid Time Off consists of vacation, sick and Holidays.

1. Vacation time is negotiable and the recommended numbers only reflect best practices, however the State of CA requires the full carryover of all hours of accrued and untaken vacation from one year to the other. Other states allow employers to limit or deny any amount of carryover.
2. Sick time is regulated by the State of Employment – which means the Employee's State of Residence when working remotely. NY, NJ, CA, and WA are among the states that closely monitor the amount of sick leave and the mandatory carryover.
3. Holidays are usually aligned with the main Federal Holidays and mentioned in the offer letter and the Company Handbook.

#### **b. Health Benefits**

Health benefits consist of Medical, Dental and Vision insurance, but the employer may choose to only provide medical coverage – the rest is considered as ancillary benefits. Employers with 50 or more full-time employees across the US are mandated to provide

affordable medical insurance to employees and their dependents according to the Affordable Care Act of 2016.

In any case, most employers provide group insurance as soon as they meet the threshold required by the insurance carrier. That threshold used to be 5 employees, but market conditions are now showing that carriers won't quote a group smaller than 10 people, even when that group works with a PEO. You will, nonetheless, have access to dental, vision, and other ancillary insurances through your PEO, even if you have only one employee.

**i. What Do We Do Until We Qualify For Group Medical Insurance?**

Certain brokers will be able to obtain medical insurance for a company with two full-time employees, if one is not a dependent of the other. However, the rates will be very high and the choice of plans is limited.

In order to ensure that prospective employees get the same level of coverage than with their previous employers, then there is a possibility to reimburse their COBRA expenses until group insurance is obtained – with certain limitations. That should be mentioned in the offer letter.

**ii. Benefits Classes**

Creating different classes of benefits allows the company to have more flexibility when trying to hire executives who are highly in demand and /or are working at large organizations. Once you have established these classes, you can still choose to give the same benefits to all employees under the "staff" or "standard" class. You can always put the employee into a higher class, such as "Executive" but you cannot demote that employee toward a lower class, such as "Interns". Certain states like MA require all employees in that state to receive the same amount of company contribution toward benefits, even if working with a PEO (Professional Employer Organization).

**c. Parental Leave**

NY State was the first state to provide a paid parental leave, with employee and employer payroll deductions towards the premium, but several states have followed their lead: NJ, WA, MA, RI, CA, CT, and DC. OR will start in 2023. The number of weeks and maximum allowed benefits vary per state. However, employees need to work for a certain number of hours (6 months on a full-time basis in NY) to qualify for the paid leave, and they will not receive their entire pay. The system is very similar to unemployment benefits in the sense that both employers and employees contribute to the premiums, but that certain conditions and limitations apply to the leave. I have compiled a list of states and their Parental Leave regulations, which I regularly update and will send you upon request.



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The Federal Medical Leave Act mandates an unpaid leave of up to 12 weeks at Companies with over 50 employees in a certain geographical radius, but most small employers extend that unpaid leave even in the absence of a mandate.

Parental Leaves apply to all genders (otherwise it would be discriminatory) so it may be necessary to create both a Parental Leave policy and a Pregnancy/Childbirth policy.

In a market wherein demand for talent is high, even small employers are offering some kind of paid parental leave to attract and retain valuable employees. As mentioned above, Google offers a total of 20 weeks of paid leave, which is not something a startup can afford – not just in terms of costs, but also because every employee absence is truly felt at a startup.

#### **d. 401k**

Employers are not mandated to provide a 401K of any type in any state of the US, but if they do create a 401K plan, it needs to meet certain conditions sets by the IRS. As such, it has to pass a number of tests (the plan testing) or incur additional company contribution and penalties for failure. On top of the flat contribution of 3% to all employees in case the plan fails, the IRS mandates that high-earners receive their contributions back if the plan is deemed “top-heavy” which means that it is privileging executives and Highly Compensated Employees

Small companies often adopt a Safe Harbor 401K, which requires a contribution match but protects the plan for corrections and penalties in case of failure.

#### **e. Supplemental benefits**

Employers, especially those working with a PEO, can choose to extend a large array of supplemental benefits, such as life insurance, Short-Term and Long Term Disabilities, or Accident coverage. These benefits are not considered as core Health benefits and are therefore taxable. It is important to note that even if the employer pays the premium for Short-Term Disability, it is the entire responsibility of the employee to present a valid claim to the insurance carrier and follow-up on payments – the employer cannot be part of that process.

Employees can also choose supplemental benefits on a voluntary basis – payments will be made, after taxes, from their payroll.

In a tough hiring market, companies often bring creative benefit solutions to the table, in the form of meal allowances, bike allowances, or contributions toward team-building social activities such as escape rooms. I have found that the “coolness factor” far outweighs the actual value of the benefit.



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## Compensation

### **a) Pay range**

Certain sites may give you a salary range depending on your industry, the number of employees at the company, job title, and location. However, the range is often very large and the determination doesn't take into account the specific market conditions that may make hiring a difficult proposition. What really determines the pay range is the feedback from candidates, as you will always ask them for their salary expectations. Do not, however, ask them for their current salary, as this question is illegal in an increasing number of states (see the paragraph on "Salary History Ban" in my compliance document).

**In essence, the feedback from your internal recruiter is going to be critical.** I tend to take the feedback from external recruiters and agencies with a grain of salt, because it is in their best interest to ensure large salaries for their candidates.

It is highly recommended to define the salary range for the position in the Job Req, agree on it internally, and if the location is clear, mention it in job postings, together with the list of criteria that allow some variation within the range.

### **b) Equal Pay Act**

Simply put, employees performing the same job would earn the same pay. There are provisions for cost of living according to the employees' locations, but years of previous experience, for instance, are not relevant.

This area of the law is a very strong concern of HR professionals in the US, because hiring managers often employ, inadvertently, practices that make intuitive sense, but are completely unlawful under the EPA.

### **c) Cost of Living**

The EPA provisions certain variations due to the cost of living. The governmental (GSA) guidelines for per diem by city and state are a useful tool in calculating the relative percentage of one location to another. For instance, looking at the M&I (Meals & Incidentals) rates, NYC is 35% more expensive than Plano, Texas.

### **d) Salary/Pay updates**

Federal and State laws allow companies to promote or increase the pay of any employee without even requiring a notice, as the new pay will serve as notice after two or more pay cycles. However, it is clearly a good practice to share the good news with the employee, even if verbally.

However, demotions and salary decreases are rarely practiced in any state, as employment is at will and unless there is a reorganization, requiring for instance all remote employees to



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lower their pay, it is recommended to just separate from an employee rather than singling out that person for a decrease in pay. Not only could that practice lead to a discrimination suit if the employee belongs to any protected class (and states like NY and CA are constantly introducing new protected classes) but at the least, will create strong resentment and loss of morale amongst the employees.

## References

### **a) HR Knowledge Base and Certifications Organizations**

There are two main professional associations and certifications institutes in the US: HRCI (HR Certification Institute) and SHRM (Society for HR Management). Their respective certifications range from the easiest, aPHR (associate Professional in HR) to GPHR (Global Professional in HR) and from CP (SHRM's certified professional) to SCP (Senior Certified professional). These certifications require ongoing learning and professional mastery of all aspects of HR in the US – as well as global HR Management in the case of GPHR.

### **b) Useful Links**

#### **i. SHRM**

<https://www.shrm.org/>

#### **ii. HRCI**

<https://www.hrci.org/>

#### **iii. EARN**

<https://askearn.org>

#### **iv. COBRA**

<https://www.dol.gov/general/topic/health-plans/cobra>

#### **v. Equal Pay and EEOC**

<https://www.eeoc.gov/employers/small-business/small-business-requirements-requirements>