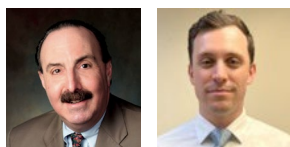


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Employment Law Insider Alert

NYC Enacts Pay Transparency Law, Effective November 1



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Key points:

Effective November 1, New York City employers must disclose salary information in job advertisements.

Job advertisements may post either a payment range or a specific salary or hourly wage.

Violators have 30 days to cure a first violation, but thereafter may be subject to civil penalties.

In May 2022, the New York City Council enacted a law amending the New York City Human Rights Law to require “Salary Transparency in Job Advertisements.” This new law requires covered employers to disclose salary information in advertisements for open positions that can or will be performed in New York City, at least in part. The pay transparency law, originally planned to go in effect on May 15, 2022, will become effective on November 1, 2022. Employers should understand their rights and obligations under the new law to avoid costly monetary damages or civil penalties that may result from violations.

Requirements Under the Law

New York City’s pay transparency law applies to employers with four or more employees (including independent contractors and owners), only one of whom needs to be located in New York City. These employers must disclose the compensation or minimum and maximum range of compensation that they believe in “good faith” they would pay at the time of posting in any advertisement for a job, promotion, or transfer opportunity.

Guidance issued by the NYC Commission on Human Rights (“the Commission”) states, “‘Good faith’ means the salary range the employer honestly



believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).” The ranges posted in advertisements cannot be open-ended. For example, “\$15 per hour and up” or “maximum of \$50,000 per year” would violate the new law. If an employer does not want to post a salary range, the minimum and maximum salary must be identical. For example, “\$20 per hour” would comply with the new law.

Employers are not required to disclose a salary for a position they do not plan to “advertise.” The Commission defines an “advertisement as a “written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants.” These advertisements are covered by the law regardless of the medium in which they

are disseminated. Covered advertisements include internal job postings, internet advertisements, printed flyers, and newspaper advertisements.

The new provisions of NYCHRL apply to all job postings regardless of the type of employee positions being advertised. For example, advertisements for full or part-time roles, interns, domestic workers, independent contractors, or any other category of work protected by the NYCHRL are all covered under the new law. In addition, the new law applies to positions that can be performed remotely in New York City.

What Is Not Required Under the Law

Under New York City's law, employers are **not** required to include or disclose bonuses, commissions, benefits, or other types of compensation in their advertisements. Likewise, employers are not required to include frequency of pay, benefits, and other forms of compensation connected with the job posting. The law does not prohibit employers from hiring without the use of an advertisement and does not require employers to advertise open positions at all during the hiring process.

Covered New York City employers that have office locations in other states and choose to advertise open positions in other states will likely not have to comply with New York City's salary transparency law. However, with many states outside of New York now implementing similar laws, employers should review hiring protocols to ensure compliance with those states.

The law does not apply to temporary employment at "temporary help firms" since these firms are already themselves required to disclose information regarding salary range for positions under the New York State Wage Theft Prevention

Act. Employers that work with temporary help firms must themselves follow the new law, however.

Enforcement and Penalties

The Commission on Human Rights and The Law Enforcement Bureau are authorized under the law to investigate complaints filed by individuals against employers¹. Employees who have claims against their current employers may file a lawsuit in civil court. It appears that outside job "applicants" do not have such a cause of action. Employers found in violation of the transparency law may be subject to monetary damages to affected employees or may be required to amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief. Employers will not be subject to civil penalty for a first violation if they cure the violation within 30 days of receiving notice from the Commission. According to the Commission, employers who fail to cure its first violation of the new law, and any subsequent violations, may be subject to civil penalties of up to \$250,000.

Conclusion

Covered employers should review their current hiring procedures regarding job postings and advertisements and prepare to make necessary changes prior to November 1st, 2022 to ensure compliance with the New York City pay transparency law's mandates. ▲

ENDNOTES

¹ *New York City Commission on Human Rights Salary Transparency in Job Advertisements Guidance (May 5, 2022)*, <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Salary-Transparency-Factsheet.pdf>.

Employers found in violation of the transparency law may be subject to monetary damages to affected employees.

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