

New York City's Wage Transparency Law Requires Salary Ranges to be included in Job Advertisements

by Laura M. Lestrade, Krista Bolles, and Melissa Raphan

New York City takes another step toward pay equity and transparency by joining a growing number of states throughout the country that have enacted pay transparency laws. New York City employers and their agents will soon be prohibited from advertising a job, promotion or transfer opportunity without stating the minimum and maximum salary for the position. The new law, which amends the New York City Human Rights Law ("NYCHRL"), takes effect on May 15, 2022. Failure to provide a salary range "from the lowest salary to the highest salary that the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion, or transfer" will now constitute an unlawful discriminatory practice under the NYCHRL.

The law leaves many open questions. It does not define the term "salary," including whether it applies only to salaried (exempt) employees as opposed to hourly (nonexempt) employees, and whether it includes only base pay or discretionary bonuses and incentive compensation as well. We recommend employers err on the side of caution and comply with the law for both exempt and nonexempt positions. It remains to be seen how the "good faith" standard, which is measured at the time of a posting, will be interpreted and whether it may create a potential loophole for employers.

The law likewise does not define what it means to "advertise" a position. Online job postings are clearly covered, but it is less clear whether an individual outreach to an employee about an opportunity for transfer or promotion would constitute an "advertisement." Another question is what the geographic scope of the law will be, and in particular how it will apply to remote jobs—both those performed within and outside of New York City.

Individuals alleging a violation of the law may file a complaint with the New York City Commission on Human Rights or a lawsuit in court. The remedies available in litigation include punitive damages, injunctive relief and any other remedies a court may deem appropriate. For an agency complaint, the Commission can impose a civil penalty of up to \$125,000, or up to \$250,000 for a willful violation. It is unclear whether penalties will

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be assessed on a per-posting or applicant basis.

The law applies to employers with four or more employees (including independent contractors). It does not apply to temporary staffing agencies that advertise temporary positions, as such firms are already required to provide wage range information in compliance with the New York State Wage Theft Prevention Act.

Employers can take several steps now to ensure compliance with the law. Employers should update their job postings to include salary range information and revise templates as necessary. In addition, with equal pay claims on the rise, this is a good opportunity for employers to review their processes for determining salary ranges and the relevant factors upon which they rely. Employers may also want to consider adopting formal pay scales for positions and training those involved with the hiring process on them. We recommend employers document objective criteria for offers they make within a stated salary range. For example, individuals with a certain experience threshold will receive offers at the top end of the range, whereas individuals with less experience will be offered a salary at the lower end of the range.

While it remains to be seen what impact this law will have on pay equity, it certainly will not be the last of its kind. Similar legislation has already been proposed for New York State, and we expect pay transparency laws to be enacted in additional jurisdictions.