

New York Governor Hochul Signs New York Pay Transparency Bill Into Law

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On December 21, 2022, New York Governor Kathy Hochul signed a pay transparency law ([Senate Bill 9427](#)), requiring the disclosure of compensation and other information in connection with the advertisement of jobs that can or will be performed in New York. The law becomes effective on September 13, 2023, however, the law also directs the New York State Department of Labor to issue regulations which may further elaborate on legal requirements.

The new law introduces three pay transparency provisions into New York law. First, an employer that advertises or posts a job, promotion, or transfer opportunity must disclose two things: (1) the compensation or a range of compensation for the position being advertised, and (2) the job description for the position, if a job description exists. Second, the law prohibits employers from taking any adverse action against an applicant or current employee for “exercising any rights under this section,” such as asking for a pay range or a job description. Third, the law provides a remedial scheme for applicants and employees who are aggrieved by violations of the section, including civil penalties for employers and potentially injunctive relief to mandate compliance.

Employers will no doubt have many questions about the new law, including whether they are covered under the statute, how to comply, and what the consequences are for violations. Significant questions include:

Am I a covered employer?

The law applies generally to employers with four or more employees. “Employer” is defined as “[a]ny person, corporation, limited liability company, association, labor organization or entity employing four or more employees in any occupation, industry, trade, business or service, and any person, corporation, limited liability company, association, or entity acting as an employment agent or recruiter, or otherwise connecting applicants with employers [but not] temporary help firms[.]” Like the New York City pay transparency ordinance which went into effect on November 1, 2022, the text of the state law does not spell out which employees are counted for coverage purposes.

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However, Guidance from the New York City ordinance suggests that if the employer has four employees *total*, and at least one employee works in New York City, the employer is subject to the City's pay transparency requirements.

I am posting for a remote position. Is that covered?

The text of the statute states that no employer "shall advertise a job, promotion, or transfer opportunity that *can or will be performed, at least in part*, in the State of New York" without providing compensation information. The New York City Commission on Human Rights similarly interprets the City's pay transparency ordinance to apply to jobs that "can or will" be performed in New York City. Interestingly, New York City's ordinance is worded differently from the state law. The City's ordinance provides that it does not apply to positions "that cannot or will not be performed, at least in part, in the city of New York." Future regulations or guidance from the Department of Labor may clarify how remote positions fit with this statute. However, in the interim employers should consider applying a commonsense reading of the State statute to their postings. Employers should also consider taking prophylactic steps to ensure compliance with the law where doing so would impose few, if any, additional costs, even if there is a reading of the statute that makes it inapplicable to workers outside the territorial boundaries of New York.

What information am I required to include in my job postings?

The law requires the disclosure of: (1) the compensation or a range of compensation for the position being advertised, and (2) the job description for the position, if a job description exists. The compensation or compensation range and any existing job description must be provided in the job posting itself.

What about internal job postings and transfers?

The law applies to employers, employment agencies, employees, and agents thereof who "advertise a job, promotion, or transfer opportunity." The New York Labor Law does not define what "advertise" means. Looking again to New York City's guidance on its own pay transparency law, "advertisement" is defined there as a "written description of an available job, promotion or transfer opportunity that is publicized to a pool of potential applicants." In New York City, an advertisement is covered regardless of the medium used; online job posts, advertisements on bulletin boards, internal corporate emails, job fair flyers, and job listings in traditional newspapers are all covered.

What are the consequences for violations?

An employer who does not comply with this law is subject to a civil penalty as identified by New York Labor Law § 218. That section gives the New York Commissioner of Labor the authority to issue an order mandating an employer's compliance with the law. Additionally, the Labor Commissioner "*shall*" order a civil penalty not to exceed \$1,000, \$2,000, or \$3,000 for a first, second, or third or further violation, respectively. In setting the penalty amount, the Labor Commissioner will consider the size of the employer's business, any good faith mistakes that led to the violation, the history of other labor law violations, and the gravity of the violation.

Conclusion

Although many questions remain about how this law will be enforced, there are several steps employers can begin taking to ensure compliance with it. Employers with operations in the state of New York should consider how they will update their postings for job, promotion or transfer opportunities where the job can or will be performed in New York. Such postings must include the position's salary range information, and a job description if one exists. This is a good time for employers to review their processes for setting salary ranges and the factors on which salaries are based. Documentation of objective criteria for the compensation offered to candidates within certain pay ranges may be prudent. For example, within a published salary range, applicants with certain training or educational attainment will be offered salaries at the high end of the range, while applicants with less training or education will be offered salaries at the low end. Ensuring that salary criteria are objective and non-discriminatory not only helps employers prepare for compliance with this law, but can also help employers head-off potential equal pay claims. Stay tuned for future guidance based on regulatory developments on this topic.