Insights: Publications

New York City's Pay Transparency Law Takes Effect November 1

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On May 12, 2022, New York City Mayor Eric Adams signed into law amendments to the New York City Human Rights law that will require New York City employers to include salary ranges in job advertisements. The law becomes effective on November 1, 2022.

Covered Employers

The law applies to all New York City employers (and employment agencies) with at least four employees. The New York City Commission on Human Rights (the "Commission") has issued guidance clarifying that the new law applies to employers with at least four employees total, so long as one of the employees works in New York City. Temporary help firms are exempted from the law, but employers who source talent through such firms are not.

Covered Positions

The law's requirements apply to a range of workers, including full- and part-time employees, interns, and independent contractors. The law applies to positions paid on both an hourly and salaried basis. It specifically excepts positions that "cannot or will not be performed, at least in part, in the city of New York." According to the Commission, the law applies to postings for remote work, as it directs employers to follow the law when advertising for a position that "***can*** or will be performed in whole ***or in part***, in New York City, whether from an office, in the field, or remotely from the employee's home."

New York City's law is similar to Colorado's Equal Pay for Equal Work Act in its application to remote work. The Colorado law requires covered employers to include the salary or hourly compensation for "remote work performable anywhere." While this phrasing suggests employers could avoid application of both laws by excluding candidates in Colorado and New York City, the Colorado Department of Labor and Employment has taken the position that covered employers cannot avoid the Colorado law's requirements by excluding Colorado applicants. It is not clear whether New York City will adopt a similar stance, but employers advertising for candidates nationally should ensure job postings for fully remote and hybrid positions comply with both laws.[1]

Covered Job Advertisements

The guidance defines “advertisement” as a “written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants,” regardless of form. It identifies examples of covered job advertisements, including “postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements.” Notably, the law does not prohibit employers from hiring, transferring, or promoting workers without an advertisement.

Information Required

Covered job postings must include the salary range the employer in good faith believes it is willing to pay for the job. The guidance defines “good faith” as 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 advertisement must include both the minimum and maximum salary as the law prohibits open-ended salary ranges (*e.g.*, “$15.00 per hour and up” or “maximum of $50,000 per year”). The guidance specifies that where there is no flexibility in the rate of pay, the disclosed range may be a simple statement of pay offered rather than a range (*e.g.*, “$15.00 per hour” or “$75,000 per year”).

Only the base wage or rate of pay must be included (i.e., “$20 per hour” or “$50,000 per year”). In other words, other forms of compensation or benefits, such as health insurance, PTO or vacation time, contributions towards retirement or savings funds, or bonuses, need not be included in the disclosure.

The law does not prohibit employers from offering more than the stated range for better-qualified candidates, or less if financial circumstances change for the company.

Legal Enforcement

The Commission will accept and investigate complaints of workers subjected to a violation of the law. Its Law Enforcement Bureau may also initiate its own investigations based on tips or testing. Under the law, the Commission may impose civil penalties up to $250,000 for willful violations. However, the Commission will not assess a penalty for a first complaint if the employer shows it has corrected the violation within 30 days of receiving notice from the Commission.

In addition to monetary penalties, the Commission may require employers to amend job advertisements, create policies, conduct training, and provide notices of rights to employees or applicants. The law also provides a private right of action where individuals may recover compensatory and punitive damages, attorneys' fees, and costs for violations.

Footnotes

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[1] Given the difference between the cost-of-living in Colorado and New York City, employers may wish to offer different salary ranges for candidates located in the two jurisdictions. If that is the case, an employer should set

forth ranges for both jurisdictions (e.g., Colorado: $50,000-$65,000; New York City: $65,000-$80,000).

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