

NOVEMBER 9, 2022 | STATE & LOCAL TRENDS

## New York City Pay Transparency Law Goes into Effect – Tips for Employers

After a series of amendments passed by the New York City Council in the Spring of 2022 postponed the effective date of the [New York City Pay Transparency Law](#), the law finally went into effect on November 1, 2022. Employers need to take swift action to ensure that their job advertisements comply with the law, if they haven't already done so. The law amended the New York City Human Rights Law (NYCHRL) to make it an unlawful employment practice for a covered employer to advertise a job, promotion, or job transfer without disclosing the minimum and maximum salary or hourly wage range of compensation for the position that the employer in good faith believes it would pay for the position.



A covered employer is any employer with four or more employees, including independent contractor and owners, or one or more domestic workers, that has at least one employee who works, at least in part, in New York City. The law also covers employment agencies of any size. Temporary help firms that recruit, hire, and assign their own employees to perform work or services for other organizations to support or supplement the other organization's workforce are exempt from the disclosure requirements. However, employers that work with temporary help firms must follow the disclosure requirements.

Prior [guidance](#) issued by the New York City Commission on Human Rights (the "Commission") provides that the "salary" employers must disclose is the "base annual or hourly wage or rate of pay," and it does not need to include other forms of compensation or benefits offered in connection with the advertised job, such as health insurance, 401K contributions or employer-funded pension plans, severance pay, overtime pay, commissions, tips, bonuses, and stock. The guidance also provides further instruction about how the law applies, which include the following highlights:

- **Coverage and Application**

- The four employees do not need to work in the same location, and they do not need to all work in New York City.
- As long as one of the four employees works in New York City, the workplace is covered.
- The disclosure requirements apply to any 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. In other words, employers outside of New York City need to be aware of the law's potential reach, especially with respect to remote jobs that *could* be filled by persons living (and working from) New York City. Employers that

post for remote jobs and have more than four employees should include compliant salary/wage ranges in postings for those jobs.

- **Job Advertisements**

- The disclosure requirements must be included in all job advertisements regardless of whether they are seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHRL.
- The salary range disclosure must be provided in any and all job advertisements regardless of the medium in which they are disseminated, including postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements.
- Employers must include both a minimum and a maximum salary – i.e. the range cannot be open ended. For example, “\$15 per hour and up” or “maximum \$50,000 per year” would not be consistent with the new requirements.

- **Non-Advertised Hiring**

- The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire an employee.

Violations of the law may be costly. Employees have a private right of action against their current employer for an alleged violation of the law in relation to an advertisement by their employer for a job, promotion, or transfer opportunity. Applicants or employees can also file a complaint with the Commission, and violators can be liable for monetary damages, as well as civil penalties of up to \$250,000. However, the Commission will not issue monetary penalties for first-time violators, provided the employer cures the violation within 30 days. Despite the Commission’s enforcement leniency for first time violators, employers should not wait to make changes to their job postings, as private employee actions can still be costly.

To avoid potential liability, covered employers should carefully determine and document pay ranges for all positions. Additionally, employers should audit existing job advertisements templates or create new templates to ensure that they include a section that discloses the salary range for an advertised position. Supervisors, managers, and human resources should also be trained on the disclosure requirements and the implications of failing to comply. Ultimately, developing an internal review process to ensure that all job postings include a wage range prior to dissemination will help mitigate the potential risk for fines or private lawsuits.

Even covered employers outside New York City should ensure they include target salary ranges in advertisements for remote positions, unless the position expressly cannot be performed in New York City. As a best practice, all employers, especially multi-jurisdictional employers, should consider whether to universally modify their job advertisements to include salary ranges. The number of pay transparency laws throughout the country are growing exponentially. Notably, a [bill](#) was recently passed by the New York State Senate to implement a state-wide pay transparency law. Even if there isn’t a pay transparency law that applies to a given job advertisements, large employers should still consider whether they would prefer to have uniformity across all job postings or whether salary range information will only be included in postings for roles that can be performed in New York City or another jurisdiction with a similar pay transparency law, such as Colorado and Washington.

