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New York City to Require Salary Ranges in Job Postings

On January 15, 2022, New York City amended the New York City Human Rights Law (“NYCHRL”) to require employers to disclose a salary range in all job postings. This represents the latest legislative step in a growing trend towards pay transparency in employment.

Under the amended NYCHRL, employers must include the minimum and maximum salary when advertising any job, promotion or transfer opportunity. The law covers nearly all employers in New York City, and it will go into effect on May 15, 2022.

Overview of the Law

What the Law Requires

The law declares it an unlawful discriminatory practice for an employer or employment agency “to advertise a job, promotion or transfer opportunity without stating the minimum and maximum salary for such position in such advertisement.”¹ This requirement applies to any job advertisement, whether external or internal, including postings for promotions or transfers within an organization. An employer must use “good faith” to determine, at the time it posts the advertisement, the minimum and maximum salary that it would pay for the job, promotion, or transfer.²

The law leaves open several questions. Most importantly, it does not define “salary,” nor does it explain how employers must communicate the minimum and maximum “salary” in job postings. The law also does not address how, if at all, it applies to remote workers. When introduced as a bill in the City Council, the law’s geographic scope was limited to “any position located within New York City.” However, later amendments removed this limitation. As a result, the law does not currently address whether its provisions apply to any job posting advertised within New York City, or whether its scope is limited to only “positions located within New York City.”

¹ Act of Jan. 15, 2022, N.Y.C. Int. No. 1208-B, § 2, Enactment No. 2022/032, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3713951&GUID=E7B03ABA-8F42-4341-A0D2-50E2F95320CD>.

² *Id.*

Who Is Covered

The law mandates broad compliance among employers. It applies to all employers of four or more people, including independent contractors, as well as to employment agencies. Only job advertisements for temporary positions at temporary staffing firms are exempted from the law's disclosure requirements.³

When the Law Will Go into Effect

The New York City Council passed the bill on December 15, 2021. Mayor Eric Adams had until January 14, 2022 to veto the bill, but did not do so. As a result, the law will take effect on May 15, 2022.⁴ The New York City Commission on Human Rights ("Commission") is authorized to "take such actions as are necessary to implement" the law, including by promulgating rules, prior to May 15.⁵ Accordingly, we expect the Commission to further clarify the law's provisions, including, for example, by defining "salary."

Trends in Pay Transparency Laws

New York City is the latest in a growing list of state and local governments that have enacted similar pay transparency laws. Notably, however, the NYCHRL goes further than any other pay transparency law (other than Colorado's) in requiring employers to disclose salary ranges in job postings. We summarize recently enacted pay transparency legislation below.

- *California*: An employer must provide the pay scale for a position upon a job applicant's request following an initial interview.⁶
- *Colorado*: All job postings must disclose the hourly or salary compensation, or a range thereof, along with a general description of benefits and other compensation.⁷
- *Connecticut*: An employer must disclose a job position's salary range upon an applicant's request or when an employment offer is made, whichever is earlier.⁸
- *Maryland*: Upon a job applicant's request, an employer must provide the salary range for the position to which the applicant applied.⁹
- *Nevada*: An employer must provide salary range information to any applicant who has been interviewed for a position, even if the applicant has not requested it.¹⁰
- *Rhode Island*: An employer must disclose the salary range for a position upon the earlier of: (i) the applicant's request, (ii) when inquiring about the applicant's salary expectations, or (iii) when an employment offer is made.¹¹

³ *Id.*

⁴ *Id.* § 3.

⁵ *Id.*

⁶ Cal. Lab. Code § 432.3(c) (effective Jan. 1, 2018).

⁷ Colo. Rev. Stat. § 8-5-201(2) (effective Jan. 1, 2021).

⁸ Conn. Gen. Stat. § 31-40z(b)(9) (effective Oct. 1, 2021).

⁹ Md. Code Ann., Lab. & Empl. § 3-304.2(a) (effective Oct. 1, 2020).

¹⁰ Nev. Rev. Stat., SB 293, § 1.3(2) (effective Oct. 1, 2021).

¹¹ 2021 R.I. Laws Ch. 21-168 (effective Jan. 1, 2023).

- *Washington*: An employer must disclose the minimum wage or salary for a position upon the applicant’s request, after the employer has offered the applicant the position.¹²

We also note that the New York State Senate and Assembly have introduced pay transparency legislation similar to the amended NYCHRL. The Senate and Assembly bills currently under consideration would require all New York employers to disclose in any posting for an employment opportunity (i) the compensation or a compensation range, (ii) a job description, and (iii) a general description of benefits.¹³ The State Senate and Assembly bills would also prohibit retaliation against applicants or current employees who exercise the rights granted under each bill.¹⁴

Implications for Employers

Covered employers in New York City should take steps to ensure compliance with the new pay transparency requirements before they go into effect on May 15, 2022.

Employers should inform managers, human resources personnel, and legal and compliance departments of the new law’s requirements. In addition, employers should review existing job posting templates—including internal postings for promotions and transfers—and create new templates, as necessary, that include the salary information required under the new law.

Covered employers should continue to monitor the implementation of New York City’s pay transparency law for any further clarification from the Commission on the law’s provisions, including, for example, the definition of “salary,” how employers must communicate the minimum and maximum “salary” in job postings, and the law’s geographic scope.

Employers should continue to monitor the pending legislation in the New York State Senate and Assembly.

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¹² Wash. Rev. Code § 49.58.110 (effective July 28, 2019).

¹³ S5598B, 2021–2022 Reg. Sess. (N.Y. 2021); A6529A, 2021–2022 Reg. Sess. (N.Y. 2021).

¹⁴ *Id.*

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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