



Salary Transparency Law Set to Rock New York City Labor Market: An Employer's 3-Step Compliance Plan

Insights

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In the City's latest effort to combat gender and race-based pay inequity, the New York City Council passed a salary transparency bill at the end of last year, and it was enacted on January 15 after Mayor Eric Adams took no action on the bill. As a result, New York City employers will need to disclose the expected salary range on internal and external job listings beginning May 15, 2022. Here is what NYC employers need to know about the impending new law.

What Does the Law Do?

The law amends the New York City Human Rights Law, the anti-discrimination law governing New York City employers. The statute makes it an unlawful discriminatory practice to not include in job listings the minimum and maximum salary offered. The minimum and maximum salary listed in the advertisement must be the salary the employer believes in good faith it will pay for the position.

The disclosure requirement covers external job advertisements as well as internal postings for transfers and promotions. Temporary staffing agencies are exempted from the law since they already have other applicable wage disclosure requirements under the New York Wage Theft Prevention Act.

Questions Remain

The statute itself contains little detail about the geographical scope of the new law. While an earlier version of the statute specified that the law applied to job listings for positions within New York City, that language was eliminated in the final version. Accordingly, it is unclear whether the law applies to postings only for jobs physically located in New York City or if it would also apply to job postings that are directed towards applicants who reside in New York City for a job situated outside of the City. In a hearing discussing the law prior to its passage, Special Counsel from the New York City Commission on Human Rights suggested it would apply to people who *work* in New York City, including employees who work remotely from New York City.

The impact on job postings for remote workers is even murkier. If an employer advertises for a remote position that can be performed wherever the employee resides, it is unclear if the salary transparency law would require the employer to post the salary range. This is because the position

could theoretically be filled by an applicant who lives in — and accordingly would work remotely from — New York City.

Last year, the Colorado Department of Labor issued guidance interpreting its similar salary transparency law to apply to remote positions that might be filled by someone working in Colorado. This resulted in employers essentially blacklisting Colorado-based workers by indicating in remote job postings that, if hired, the employee could work remotely from anywhere other than Colorado. While this practice was subsequently declared to be illegal by the Colorado Department of Labor, it is unclear whether NYC officials want to walk down that same path.

What This Means For New York City Employers

Beginning in May, most New York City employers will have to publicize salary ranges for every job posting for the whole world to see. This is significant. While New York City joins a growing number of jurisdictions requiring salary transparency (for example, California, Connecticut, and Nevada, to name just a few), implementation of this law stands to create a greater impact given the sheer size of New York City, with about 220,000 businesses and almost four million private sector jobs. Moreover, these states, unlike NYC and Colorado, do not require pre-emptive publication of salary information. The impact may even be boundless depending on New York City's position on the applicability of the law to job postings for remote positions that can be performed anywhere.

3-Step Compliance Plan

Except for the smallest of businesses, employers across the city will need to reckon with the requirement to disclose salary information in job listings. Here are three steps you should consider to come into compliance with the impending new law.

- You should begin to assess your policies for determining salaries and make adjustments where necessary.
- You should next develop a process by which you will consistently publish that information in connection with internal and external job postings.
- Finally, you might also consider an internal audit of current employee salaries to make sure there are no significant discrepancies. At best, such anomalies could lead to discontent and employee attrition once you must start including salary information on job listings. At worst, they could lead to an equal pay lawsuit if pay differentials appear to be based on a protected characteristic such as race or gender.

Conclusion

Employers in the rest of the state should not rest easy since this legislation may soon be effective statewide. Indeed, politicians in Albany have again introduced legislation to this effect this legislative session, and Governor Hochul has indicated her support on a continued focus on pay equity efforts.

We will monitor developments related to this law, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions about the salary transparency law or your related policies, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our New York City office](#).

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