



NYC Issues Guidance on Salary Transparency Law: 5 Key Takeaways for Employers

Insights

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New York City employers need to disclose the expected salary range on internal and external job listings starting on May 15 due to a salary transparency statute enacted by the City earlier this year. While the statute left many questions unanswered for employers, the New York City Commission on Human Rights (NYCCHR) recently issued guidance on the impending disclosure requirement in the form of a fact sheet. Here are the top five key takeaways from the March 22 guidance for NYC employers.

Key Takeaways from the NYCCHR's Guidance

- 1. Employers with four or more employees, at least one who works in New York City, are covered by this law.** The salary transparency law is part of the New York City Human Rights Law (NYCHRL). The guidance confirms that, like other provisions of the NYCHRL, the salary transparency law applies to employers with four or more employees. The four employees do not all need to work in New York City to trigger coverage. So long as one of the employees works in New York City, the workplace is covered by the law.
- 2. The law covers ads publicized to a potential pool of applicants, regardless of the format, but employers are not required to advertise positions.** The salary transparency law applies to internal and external advertisements for a job, promotion or transfer opportunity. The NYCCHR's guidance defines "advertisement" as a written description of an available job, promotion, or transfer opportunity that is publicized to a potential pool of applicants, regardless of the medium in which disseminated. However, nothing in the law requires employers to create an advertisement in order to hire, and the law does not prohibit employers from hiring employees without using an advertisement.
- 3. Expected salary range must be disclosed when advertising for a position that can or will be performed, in whole or in part, in New York City.** The salary range must be disclosed on such advertisements when advertising for positions that can or will be performed, in whole or in part in New York City, whether from an office, remotely from the employee's home or in the field. Accordingly, based on this guidance, it appears that the law applies to advertisements for remote positions that can be performed wherever the employee resides, because the position could theoretically be filled by an applicant who lives in – and would thus work remotely — from New York City.

4. **The advertisement must include a good faith salary *range*.** The job posting must state the minimum and maximum salary the employer in good faith believes at the time of the posting they are willing to pay for the job. The NYCCHR's guidance defines good faith as the salary range the employer honestly believes at the time they are listing the job advertisement they are willing to pay to the successful applicant. Further, the guidance explains that an employer *must* include both the minimum and maximum salary. Open ended ranges like "\$15 per hour and up" or "maximum of \$50,000" are not compliant. If there is no flexibility in the salary offered, the minimum and maximum salary may be identical.
5. **The advertisement does not need to include other forms of compensation or benefits.** Much to the relief of employers, only the base wage or rate of pay range need be included in the advertisement. The NYCCHR's guidance states that other forms of compensation or benefits are not required to be included in the advertisement, such as other forms of compensation (commissions, tips, bonuses, stock options), health insurance, paid or unpaid time off work, overtime pay, severance pay, or contributions towards retirement funds. Employers may include information about benefits and other forms of compensation, the law does not require them to do so.

Amendments — and a Delayed Implementation Date — Could be On the Way

A bill to amend the salary disclosure law proposed to the New York City Council last week could bring further changes to this law as well as a delayed implantation date:

- First, the amendments propose that the salary transparency law apply only to employers with 15 or more employees, meaning smaller employers would not need to include salary ranges in their job postings.
- Second, the amendments would push the effective date of the law to November 1, 2022, giving employers more time to prepare to comply.
- Finally, the amendments seek to clarify applicability of the law. If the amendments pass, the statute will explicitly state that the law would not apply to general notices that an employer is hiring without reference to any particular position. Additionally — and perhaps most significantly — the amended language would carve out applicability of the law for positions that are not *required* to be performed, at least in part, in New York City. Accordingly, if the amendments are enacted, employers would not need to include the salary range for remote positions unless they are required to be performed in New York City, at least in part.

Take Steps Now to Comply

The salary disclosure law takes effect May 15, although employers may get a reprieve on the implementation date if the proposed amendments are successfully enacted. Regardless, employers across the city should be taking steps now so they are prepared to comply.

You should be assessing your practices for determining salaries and start developing a process by which you will consistently publish salary ranges in connection with internal and external job postings. This may include revising any template job requisition forms and template job listings.

Further, now is the time for your company to consider an internal audit of current employee salaries to make sure there are no significant discrepancies that may be revealed once you are required to post salaries on new job postings. Such discrepancies could lead to discontent and employee attrition in an already tight labor market. At worst, discrepancies could lead to an equal pay lawsuit if the pay differentials appear to be based on a protected characteristic like gender or race.

Conclusion

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 author of this Insight, or any attorney in our New York City office.

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