



Nothing to See Here (Yet)...NYC Council Grants Reprieve on Salary Transparency Law

Insights

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With less than three weeks to go before the May 15 effective date of New York City's salary transparency law requiring employers to disclose the expected salary range on internal and external job listings, the New York City Council voted to push back to the effective date of the law to November 1, 2022. Additionally, new amendments to the law eliminate the ability of applicants to file a lawsuit against an employer for violations and provide the opportunity for first-time violators to avoid monetary penalties if they cure the violation. The amended law will now be sent to Mayor Adams for signature, which is expected. **[Ed. Note: Mayor Adams signed the amendments into law May 12, 2022.]** Here is what NYC employers need to know about the amended law – and a five-step plan to comply.

How Did We Get Here?

In January 2022, New York City enacted a salary transparency law which aimed to require employers to disclose the expected salary range on internal and external job listings by May 15. The New York City Council subsequently issued guidance on the impending disclosure requirement in the form of a fact sheet.

Following enactment of the law and ensuing blowback from the business community, the City Council introduced amendments to the law. These changes would carve out applicability to employees with 15 or fewer employees and exempt general hiring notices from the salary disclosure requirement. Most critically, the amendments would ensure that ads for positions which are not *required* to be performed, at least in part, in New York City would no longer be covered by the law. Additionally, the amendments proposed pushing the effective date of the law to November 1, 2022, giving employers more time to prepare to comply.

After heated testimony from the business community and pay equity advocates during a hearing on the proposed amendment, a new version of the amended law was subsequently introduced and enacted by the City Council. We expect Mayor Adams to sign these new amendments into effect in the coming days.

The Amended Salary Transparency Law

The amended law revises the pending salary transparency measure in a few key ways:

- First, it pushes back implementation of the law to November 1, 2022, allowing businesses more time to prepare to comply.
- Second, it clarifies that jobs that pay an hourly wage, as opposed to a salary, are also subject to the wage disclosure requirement.
- Third, the amended law codifies the previously issued guidance from the NYC Commission on Human Rights regarding applicability of the law to remote job positions. The amended law states that the salary disclosure requirement does not apply to positions that cannot or will not be performed, at least in part, in New York City. The flip side of this is that law *does* apply to jobs that *can* be performed in New York City. Accordingly, 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. Accordingly, even if a business does not have a physical location in New York, its job postings for remote positions will need to disclose the salary range, so long as the business has four or more employees and at least one who works in New York City.
- Finally, the amended law provides employers some relief for potential penalties for violation of the law. The amended law eliminates the private right of action for applicants to bring a lawsuit against an employer for violation. However, a *current* employee is still permitted to bring an action against their employer for advertising a job, promotion, or transfer without posting a minimum and maximum hourly wage or annual salary.
 - Given that applicants will not be allowed to sue for violations of the law, the New York City Commission on Human Rights will be the primary enforcer of the amended law.
 - The amendments grant employers some relief there as well. Under the amended version, first time violators of the law will not be subject to any monetary civil penalty so long as they correct to the violation within 30 days.

5 Steps to Take Now to Comply

The delayed implementation date brings welcome relief for NYC employers who have been scrambling to understand their obligations under the law and implement measures to comply. Even though you now likely have more time to comply, you should use this time to better prepare your business to comply with the impending law. Here are five steps you should consider to come into compliance with the impending New York City law.

- Assess your policies for determining salaries and make adjustments where necessary. Determine and document pay ranges for all positions.
- Review existing job posting templates or create new templates (including internal listings for promotion and transfer opportunities).
- Train supervisors, managers, compliance, and human resource personnel on the implications of the disclosure obligation and take steps to ensure that recruiters are prepared to comply with the impending law.

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- Develop a process to consistently publish the expected wage range in connection with internal and external job postings.
- Consider conducting a pay equity audit to make sure there are no significant discrepancies that may be revealed once you are required to post salaries on new job listings. At best, such disparities could lead to discontent and employee attrition. At worst, they could lead to an equal pay lawsuit if pay differentials appear to be based on a protected characteristic such as gender or race. Working with your attorneys on the audit is important in order to preserve confidentiality when analyzing potential legal claims.

Even if you do not have any employees in New York City, pay transparency laws are the hottest trend in pay equity law, and we expect to see additional states and cities consider similar laws in the coming months, so you may wish to think about potential future compliance.

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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