



New York Lawmakers Pass Statewide Salary Disclosure Law

Insights

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As part of the end-of-session rush of legislative activity, New York State lawmakers passed a bill that will require private-sector employers in the state to disclose salary ranges on job postings. The bill now heads to Governor Kathy Hochul for her signature or veto. If enacted – which is expected – New York will be the latest state to jump on the hottest trend in pay equity legislation. Here is what employers need to know about the legislation – which potentially has nationwide reach.

What the Law Entails

New York's salary transparency law mandates that employers disclose the compensation or range of compensation in any advertisement for a job, promotion, or transfer opportunity. The "range of compensation" means the minimum and maximum annual salary or hourly rate that the employer in good faith believes to be accurate at the time of the job posting. For positions compensated solely on a commission basis, employers can comply with the law by including a general statement that compensation will be based on commissions. In addition to salary disclosure, employers must also provide the job description for the position, if one exists. The statute applies to employers with four or more employees, so it excludes only the smallest employers from compliance. Temporary help firms are also excluded from compliance. Employers are required to keep records that show history of compensation ranges for each job opportunity and the job description for the position.

Importantly, the statute expressly applies to any jobs that *can or will* be performed, at least in part, in the state of New York. This means the statute seemingly applies to all listings for remote positions that can be performed wherever the employee resides because the position could be filled by an applicant who lives in New York who would thus work remotely in the state. Accordingly, the statute has reach beyond employers with a physical presence in the state.

Employers who fail to comply with the statute face civil penalties of up to \$3,000, depending on employer size, good faith, gravity of the violation, and history of previous violations. Any person aggrieved by a violation of the statute can file a complaint with the New York labor commissioner, but there is no private right of action for an employee to file a lawsuit against the employer. Employers are, however, expressly prohibited from refusing to interview or hire or otherwise retaliating against any applicant or employee who exercises rights under the statute.

The statute directs the labor commissioner to issue rules and regulations to implement the statute and to conduct a public awareness campaign to help make employers aware of their obligations.

Pay Transparency Trend Continues

All employers must have pay transparency at top of mind, as this continues to be the hottest trend in pay equity legislation. [Colorado](#), [Washington](#), and [New York City](#) have all enacted similar pay transparency laws requiring disclosure of salary in job postings. Some jurisdictions, like Connecticut, Nevada, and Rhode Island require employers to proactively disclose salary ranges to candidates during the hiring process but not in job listings, while others require employers to provide pay ranges to candidates upon request (such as California, Maryland, and Cincinnati and Toledo, Ohio). We expect additional states and cities to consider similar pay transparency laws in the coming months. [California](#), for example, has a pending bill which would require employers to provide the pay scale for a position to applicants, and some form of pay transparency laws have been proposed in Alaska, Massachusetts, Michigan, South Carolina, and Vermont. You can review pay equity initiatives by checking out the [FP Pay Equity Map](#).

5 Steps to Take Now to Comply

The New York law will take effect 270 days after signed by Governor Hochul, assuming she signs it. So the effective date may be sometime in March 2023, depending on the date of signature. You should use this time to prepare to comply with the law. Here are five steps you should consider:

1. Assess your policies for determining salaries and make adjustments where necessary. Determine and document pay ranges for all positions.
2. Review existing job posting templates or create new templates (including internal listings for promotion and transfer opportunities) and ensure they incorporate job descriptions for the roles.
3. Train supervisors and managers, as well as compliance and human resource staff on the implications of the disclosure obligation and take steps to ensure that recruiters are prepared to comply with the impending law.
4. Develop a process to consistently publish the expected wage range in connection with internal and external job postings.
5. 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 a pay equity 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.

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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