

Insights, News & Events

NEW YORK STATE ENACTS STATEWIDE SALARY DISCLOSURE LAW: A 5-STEP COMPLIANCE PLAN

Insights
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Governor Hochul signed into law yesterday an amendment to New York's state labor law which will require private sector employers in the state to disclose salary ranges on job postings. With this measure, New York State is the latest jurisdiction to jump on the hottest trend in pay equity legislation that mandates employers provide salary disclosures in their job ads. The new law won't take effect until September 17, 2023, but that doesn't mean you should delay in beginning your compliance efforts. Here is what employers need to know about the legislation — which potentially has reach nationwide — and a five-step compliance plan.

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 disclose the job description for the position, if one exists.

The statute applies to employers with four or more employees, excluding the smallest employers from

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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.

Scope of Law Could Be Broad – Very Broad

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.

Stiff Consequences Await Violators

Employers who fail to comply with the statute face civil penalties 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 promulgate rules and regulations to effectuate the statute and to conduct a public awareness campaign to help make employers aware of their obligations.

Pay Transparency Continues to Trend

All employers must have pay transparency at top of mind, as this continues to be the [hottest trend in pay equity legislation](#). [Colorado](#), [Washington](#), [California](#), [New York City](#), Westchester, and Ithaca 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. Meanwhile, others require employers to provide

pay ranges to candidates upon request (e.g., Maryland, and Cincinnati and Toledo, Ohio).

We expect additional states and cities to consider similar pay transparency laws in 2023. You can review pay equity initiatives by checking out the [FP Pay Equity Map](#).

5 Steps to Take Now to Comply

While employers in New York City, Westchester, and Ithaca are already required to include the pay range on job postings to comply with local laws, New York employers in the rest of the state have time to prepare with this new law, as it takes effect September 17, 2023. You should use this time to prepare to comply with the law. Here are five steps you should consider:

- 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) and ensure they incorporate job descriptions for the roles.
- 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.
- 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.

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](#).