New York State Expands – and Contracts – Pay Transparency Law to Address Remote Work Questions

Insights
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In advance of the September 17 effective date of New York's impending pay transparency law, state lawmakers just amended the law in ways that both expand and contract the obligations imposed on employers — particularly with respect to application to jobs performed outside of the state by remote workers. There's both good news and bad news for New York employers and for those across the country. Here's what employers need to know about the amended law, which was signed into effect by Governor Hochul on March 3.

What the Amendments Entail

New York's salary transparency law is set to take effect September 17. It requires employers to disclose the compensation or range of compensation in any advertisement for a job, promotion, or transfer opportunity. In addition to salary disclosure, employers must also disclose the job description for the position, if one exists. Employers are required to keep records that show history of compensation ranges for each job opportunity and the job description for the position.

Click here to read more about the law in detail, along with a five-step compliance plan.

Before the law was amended, the statute indicated it applied to advertisements for any jobs that *can or will* be performed, at least in part, in the state of New York. Practitioners understood this to mean that the law covered 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.

Statute Will Not Apply to All Jobs That Could Be Performed In-State

As part of a negotiated change prior to Governor Hochul signing the law, **the amended statute removes the language extending applicability to jobs that can or will be performed in New York**, and instead states the law applies to postings for jobs that will be *physically performed* in the state. This seemingly removes applicability of the statute to fully remote jobs, which is a substantial contraction of the scope of the law.

But Will Apply to Certain Jobs That Report to Those In-State

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However, with the next sentence, **the statute also increases the scope to cover postings for jobs that will be physically performed outside of New York but will report to a supervisor, office, or other work site in New York**. Accordingly, if the position at issue will be fully performed outside the state – even in a non-remote location – but will report to an office or manager in New York, the job posting will need to include the pay range. This puts a substantial burden on employers to consider the reporting structure of out-of-state job listings to ensure compliance with the amended law.

It also creates a different coverage standard than NYC's pay transparency law, which applies to positions that can or will be performed, at least in part, in New York City.

Amendments Change Record Retention Requirements

In addition to the impacting the scope of job postings covered by the law, the amendments **remove the statutory requirement for employers to keep records of the history of compensation ranges and job descriptions**. Of course, employers would be wise to maintain such records anyway in the event they need to defend their compensation practices.

New Definition of "Advertise"

Finally, the amendments **add a definition of what it means to "advertise" for a job**, in which case employers need to disclose the pay range on the advertisement. "Advertise" means to make a written description of an employment opportunity available to a pool of potential applicants for internal or public viewing, including electronically. This makes it clear that the pay transparency obligation applies to *both* internal and external job listings.

The amendments to the state law will take effect as part of the law on September 17.

Don't Sleep on the City that Never Sleeps

The state amendments may not be the only change on the horizon for New York pay transparency laws. Proposed amendments to the NYC pay transparency law would significantly increase pay disclosure obligations to require disclosure of non-wage compensation associated with a position, such as bonuses, benefits, stocks, and options.

Additionally, if enacted, the amendments would require NYC employers to provide employees with the range of compensation (including non-wage compensation) for their job title, annually and upon request. The proposed amendments have been referred to the Committee on Civil and Human Rights for further review.

Conclusion

Pay transparency continues to be the hottest trend in pay equity legislation. We expect many states and cities to consider pay transparency laws in 2023. You can review pay equity initiatives by

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checking out the FP Pay Equity Map.

We will monitor developments related to the New York state and city pay transparency laws, 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 laws 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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