

NEW JERSEY PROPOSES RULES TO CLARIFY FAR-REACHING PAY TRANSPARENCY LAW: 4 ACTION STEPS FOR EMPLOYERS

Insights
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Although New Jersey's pay transparency requirements went into effect on June 1, the lack of clarity on the scope of the far-reaching law has left employers both in and outside the Garden State unsure of whether they are in compliance. The New Jersey Department of Labor (NJDOL) recently published proposed regulations seeking to clarify how the law applies to modern workplace realities, such as remote work, third-party recruiters, and multi-state operations. The proposed regulations also provide details on what must be included in job postings. Here's what employers need to know about New Jersey's pay transparency law and the proposed regulations, as well as four compliance steps you can take now.

Summary of the Proposed Rules

Since June 1, [New Jersey's Pay and Benefit Transparency Act \(NJPBTA\)](#) has required covered employers to disclose compensation and benefits information in job listings and for promotional opportunities. On September 15, the NJDOL [proposed rules](#) to clarify these requirements. The NJDOL will finalize the regulations after the 60-day comment period, which ends on November 14. The regulations will become effective after the NJDOL publishes a notice of adoption. Read on for the key takeaways.

Who is Covered?

The NJPBTA applies broadly to employers that:

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- Have 10 or more employees over 20 or more calendar weeks; and
- Do business, employ workers, or take applications for employment in New Jersey.

The proposed rules answer questions that many employers located outside of New Jersey have been asking regarding the scope of coverage:

- First, all employees – both inside and outside New Jersey – are counted when determining whether an employer meets the 10-employee threshold.
- Second, an employer is considered to be “taking applications in New Jersey” when: (1) the solicitation of applications occurs in New Jersey; and (2) the physical location of the job is wholly or substantially in New Jersey.

However, the rules leave some ambiguity for remote positions. [NJDOL guidance](#) suggests that employers based outside of New Jersey may still be covered if they accept job applications from New Jersey residents for roles that can be performed remotely from New Jersey. This could potentially extend the law’s reach to out-of-state employers with remote or hybrid teams.

Therefore, employers that hire remote employees and may employ New Jersey residents may be covered under the NJPBTA even if they do not have a physical location in the state.

What Must Be Included in Job Postings?

Under the NJPBTA, all internal and external job postings must include:

1. The hourly wage or salary, or a range for the position
2. A general description of benefits offered
3. Information about any other compensation programs the employee may be eligible for (such as bonuses, commissions, profit-sharing)

The proposed rule adds important clarifications about how employers can present this information:

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- **Pay ranges.** If a range is provided, it must include both an upper and lower limit, and the difference between the two cannot exceed 60% of the lower limit. For example, an acceptable range might be \$60,000–\$96,000, but not \$60,000–\$120,000. Employers cannot use vague phrasing such as “\$80,000 per year and up” or overly broad ranges like “\$50,000–\$500,000.” However, there is an exception. This restriction does not apply when pay ranges are set by a collective bargaining agreement, law, or local ordinance.
- **Definition of “benefits.”** The rules define this term broadly to include health insurance, life insurance, disability insurance, paid time off (vacation, holidays, personal leave, sick leave), training, pensions, and other fringe benefits.

These clarifications are intended to prevent misleading or overly flexible job postings and to ensure applicants can reasonably assess the compensation being offered.

Notifications to Current Employees

The law also requires employers to make “reasonable efforts” to notify existing employees about promotional opportunities – defined as a “change in job title and an increase in compensation” – before or at the same time they are advertised externally. This ensures all employees have a fair opportunity to apply for advancement, helping employers maintain compliance with both pay transparency and equal opportunity standards.

The proposed rule defines “reasonable efforts” to mean:

- Posting the promotional opportunity in a conspicuous location accessible to all employees in the department(s) where the promotion is available; and
- Posting on an employee intranet or internet portal that is accessible to all employees (if one exists).

This requirement does not apply to a current employee that is promoted based on years of experience or performance.

Penalties for Noncompliance

The NJPBTA set administrative penalties for noncompliance: not more than \$300 for a first violation, and not more than \$600 for each subsequent violation.

The proposed regulations explain the factors that the Commissioner of the NJDOL shall consider in determining what constitutes an appropriate penalty:

- The seriousness of the violation(s);
- The past history of previous violations by the employer;
- The good faith of the employer;
- The size of the employer's business; and
- Any other factors which the Commissioner deems appropriate.

Liability for Third-Party Job Postings

Many employers rely on third-party recruiters, staffing agencies, or online platforms to advertise openings, and these posts must also comply with the NJPBTA. However, when the third party's post is not compliant, there may be liability for the employer. The proposed rules clarify that the liability applies in these situations:

- Employers can be held liable for noncompliant job postings made by a third party if they retain control over the content of those postings or have explicitly agreed to relinquish control to the third party.
- Employers cannot be held liable for postings made on websites that automatically aggregate job listings from other sources (without the employer's direct involvement).

This means that while employers aren't responsible for job aggregators like Indeed or Google Jobs, they are responsible for ensuring recruiters, staffing agencies, and other vendors that they partner with follow the law.

4 Actions Employers Can Take Now

While these rules are still proposals and may be revised before finalized, employers should proactively comply with the NJPBTA to avoid disruption once the regulations take effect. Here are four key steps to take:

1. Review Current Job Postings. Audit all current and template job postings – both internal and external – to ensure:

- Compensation ranges are realistic, with upper/lower limits not exceeding the 60% rule
- Benefit descriptions include health insurance, life insurance, disability insurance, paid time off (vacation, holidays, personal leave, sick leave), training, pensions, and other fringe benefits
- No postings use open-ended or vague pay descriptions

2. Evaluate Remote and Multi-State Hiring Practices.

Determine whether your organization's remote job postings or New Jersey applicants could bring you under the law's jurisdiction. If you hire remote employees who live in New Jersey, you may be required to comply. Additionally, don't forget to consider all states where remote applicants are located, as [pay transparency rules vary by state](#).

3. Review Contracts with Third Parties. Examine agreements with recruiters, staffing firms, and job posting platforms to ensure they:

- Include clear obligations for compliance with the NJPBT
- Define control and responsibility for job content
- Provide mechanisms to correct or remove noncompliant postings

4. Update Internal Communication and Posting Systems. Prepare to meet the "reasonable efforts" standard for notifying current employees of promotional opportunities by:

- Identifying conspicuous physical locations for internal postings
- Confirming that intranet or employee portals are accessible to all staff and capable of displaying promotion opportunities
- Establishing a standard posting procedure to ensure consistency across departments and job sites

Conclusion

The NJPBT remains one of the most sweeping pay transparency laws in the country, and the proposed regulations provide further insight as to what steps New

Jersey employers must take to ensure both external and internal job posts achieve the goal of pay transparency.

We will continue to monitor developments in New Jersey and throughout the country on pay equity and transparency. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have any questions about pay equity or pay transparency obligations, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New Jersey Office](#) or [Pay Equity and Transparency Practice Group](#).