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NEW YORK'S "GHOST JOB" BILL COULD RESHAPE JOB POSTING PRACTICES: WHAT EMPLOYERS SHOULD KNOW

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New York's "Ghost Job" Bill Could Reshape Job Posting Practices: What Employers Should Know

New York lawmakers just passed a bill last week that would require certain employers and job posting platforms to disclose whether a job ad is tied to a current opening — and, if so, when the employer expects to fill it, or whether the posting is being used to build a future candidate pipeline. The bill targets so-called "ghost jobs," or postings that appear to advertise open roles but may instead be used to collect resumes for future hiring needs. The bill would apply to employers with 100 or more employees and certain third-party job posting platforms. If Governor Hochul signs the bill that passed the legislature on June 2 in its current form, it would take effect immediately, giving covered employers little lead time to adjust their posting practices. Here's what you need to know as you prepare for this potential change.

Why This Matters

For years, job posting compliance has largely focused on pay transparency. The bill would move the conversation into hiring transparency.

The bill matters because many employers use job postings for more than immediate hiring. Some roles are active and budgeted. Others are evergreen postings used to build a pipeline. Still others may be paused because business needs, headcount approvals, or budgets have changed.

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The bill does not ban pipeline recruiting. Instead, it would require more direct disclosures so applicants know whether an employer is hiring now, hiring later, or collecting resumes for future roles.

What Would the Bill Require?

The bill would apply to employers with 100 or more employees, as well as third-party job posting entities. A third-party job posting entity is defined as a person or entity that is not the employer and that posts multiple job vacancies or listings on behalf of, or independently of, employers for job seekers to search and apply to job postings on one platform.

Covered job advertisements would need to include one of three disclosures, depending on the employer's hiring intent:

- **Current vacancy to be filled within 90 days.** The ad would need to state, in bold capital letters, that the posting is for a current vacancy and that the employer intends to fill the position by a stated date: THIS POSTING IS FOR A CURRENT VACANCY AND THE EMPLOYER INTENDS TO FILL THIS POSITION BY (DATE).
- **Current vacancy to be filled more than 90 days later.** The ad would need to state, in bold capital letters, that the posting is for a current vacancy and that the employer intends to fill the position no sooner than a stated date: THIS POSTING IS FOR A CURRENT VACANCY AND THE EMPLOYER INTENDS TO FILL THIS POSITION NO SOONER THAN (DATE).
- **No current vacancy.** If the employer does not expect to fill the job, the ad would need to state, in bold capital letters, that the posting is not for a current vacancy and that the employer is seeking resumes for future openings: THIS POSTING IS NOT FOR A CURRENT VACANCY BUT THE EMPLOYER IS SEEKING RESUMES TO REVIEW IN THE FUTURE WHEN JOBS BECOME AVAILABLE.

The bill would also require employers and third-party job posting entities to remove job advertisements within two weeks after the position is filled or otherwise expires. Importantly, if an employer is aware or reasonably should be aware that a third-party job posting entity independently posted the position, the employer would have to notify that entity that the position has been filled.

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Compliance would not rest only with the company’s internal HR or talent acquisition team. If the bill becomes law, employers may need to coordinate with job boards, staffing firms, recruiters, recruitment process outsourcing providers, and other vendors to make sure postings include the required language and are removed when a role is filled.

The bill’s notice requirement also creates a practical monitoring issue. Employers may need a process to monitor postings that appear outside their own systems, including postings created or reposted by third-party platforms. If the employer knows or reasonably should know that a third-party posting entity independently posted the role, the employer would need to notify that entity once the position is filled.

What Are the Potential Penalties?

There is no private right of action in the bill. Instead, the bill would authorize the New York State Department of Labor to conduct audits of employer and third-party job posting entity practices and allow aggrieved individuals to report alleged violations. As a result, enforcement may not depend solely on employee complaints. Employers could face scrutiny through Department of Labor audits in addition to individual reports of alleged noncompliance.

The penalty structure could become expensive quickly.

- A violation would result in a $2,500 fine for each print publication or digital platform where the advertisement appears.
- The employer or third-party job posting entity would then have 30 days to rectify the violation.
- If the violation is not corrected within that 30-day period, the employer or third-party job posting entity would owe $5,000 for each print publication or digital platform where the advertisement appears.
- For each successive 30-day period of non-compliance, the fine would double.
- Because the fines are assessed on a per-platform basis, a single noncompliant posting that appears across multiple job boards could result in multiple penalties.

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A Key Open Question: What If Hiring Plans Change?

The bill does not identify a safe harbor or good-faith defense for employers whose hiring timelines change after a posting goes live. The bill also does not specify how precise an employer's projected hiring timeline must be or whether employers will have an opportunity to update those projections without triggering liability. That is a practical concern because hiring plans often shift for legitimate reasons, including budget changes, headcount freezes, business needs, or candidate availability.

This gap reinforces the need for a flexible review process. If the bill becomes law, employers may need to update postings quickly when a role changes from active to paused, when the expected fill date moves, or when a position is filled.

The bill also authorizes the Commissioner of Labor to adopt implementing regulations, which may eventually provide guidance on formatting, cure procedures, and penalty assessments. But employers should not expect that guidance before the bill takes effect if Governor Hochul signs it into law.

5 Steps Employers Can Consider Taking Now

The bill is not yet law but covered employers that recruit in New York should start preparing now because it would take effect immediately if signed by the Governor.

1. Map where job ads appear. Identify every place your jobs are posted, including your career site, LinkedIn, Indeed, industry boards, staffing agencies, recruiter-managed platforms, and any automated job distribution tools.

2. Separate active roles from pipeline postings. HR and talent acquisition teams should know which postings are tied to approved openings and which are used to collect resumes for future needs.

3. Develop a process for setting and updating expected fill dates. If the bill becomes law, employers may need a reliable way to determine whether a role is expected to be filled within 90 days, more than 90 days out, or not tied to a current vacancy.

4. Create a takedown, monitoring, and notice protocol. The bill would require removal within two weeks after a position

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is filled. Employers should consider who owns that process, how they will confirm that third-party platforms have removed or updated ads, and how they will notify any third-party posting entity that they know or reasonably should know independently posted the position.

5. Review third-party posting relationships. Employers should confirm who can edit postings, who receives notice when a role is filled, how quickly vendors can remove or correct noncompliant ads, and whether vendor agreements should address compliance with New York job posting requirements.

Conclusion

We will continue to track developments on job posting disclosure requirements, so make sure that you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. If you have compliance questions, consult with your Fisher Phillips attorney, the author of this Insight, or any attorney in our New York City office to assess and minimize potential risks.

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