

## > Client Alert

### Governor Hochul Signs Pay Transparency Law for New York State and New Protections for Warehouse Workers in New York

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#### Governor Hochul Signs Pay Transparency for New York State, Effective September 18, 2023

As we previously noted in a prior [Alert](#), New York City's pay transparency law took effect on November 1, 2022. In late December 2022, New York Governor Kathy Hochul signed into law a similar measure that goes into effect statewide on September 18, 2023.

The new State law requires that for jobs that can or will be performed, at least in part, in New York, an advertisement for a job, job promotion, or transfer opportunity must disclose the compensation or range of compensation for the position. The law defines the range of compensation as the "minimum and maximum annual salary or hourly range of compensation for a job, promotion or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity." If the position is paid solely based on commission, the advertisement must include a general written statement to that effect.

The State law imposes an additional requirement to those included in the existing New York City law which mandates that if a job description exists for the position, it must be disclosed in the advertisement for a job, promotion or transfer opportunity. The law does not define "job description," nor does it require employers to create a formal written job description where none previously existed. Thus, employers should be prepared to include (and update as needed) any written job descriptions, to the extent they exist, in advertisements for job, promotional, and transfer opportunities beginning next September.

Like the New York City law, the State law prohibits employers from retaliating against applicants or current employees who exercise their rights under this law. Examples of prohibited retaliation include, but are not limited to, refusing to interview, hire, or promote a candidate because of their complaint that a job advertisement violates this law. As with other statutory provisions which mandate or prohibit particular employer action and create protected rights for efforts to enforce such provisions, an employer's legitimate, non-discriminatory reason for a refusal to hire or promote a candidate who has exercised protected rights, such as the hiring or promotion of a more qualified candidate, remain viable defenses to retaliation claims.

There is no private right of action for employees under the new State law, but aggrieved persons can report perceived violations to the New York State Commissioner of Labor. And any employers found to have violated the law shall be subject to civil penalties of up to \$1,000 for a first violation, \$2,000 for a second violation, and \$3,000 for each additional violation thereafter.

Employers are also required to keep and maintain appropriate records necessary to comply with the law's requirements, such as historic compensation ranges and written job descriptions, but there is no requirement for the manner in which these records must be maintained or any specified time period for their retention.

### **Governor Hochul Signs New Protections for Warehouse Workers in New York**

On December 21, 2022, Governor Hochul also signed the Warehouse Worker Protection Act. The new law, which goes into effect even sooner on February 21, 2023, applies to employers with 50 or more workers at a single warehouse distribution center or 500 or more workers collectively at warehouse distribution centers throughout New York State.

Under the new law, warehouse employers will be required to inform workers of any quotas for satisfactory employee productivity. Employers must also inform workers of changes to those quotas within two business days of the change. Upon an employee's request, the employer must provide, at no cost to the employee, a written description of quotas to which the employee is subject, a copy of the employee's own personal work speed data, and a copy of the prior six months of aggregate work speed data for similar employees. Employers or warehouse workers are not, however, obligated to monitor work speed or maintain data pertinent thereto, and have no obligation to provide employees with data that is unmonitored.

Employees and Unions have long asserted that quotas, speed requirements, and long durations of work without adequate breaks increase the risk that warehouse workers will suffer repetitive motion injuries and joint and back pain. The Warehouse Worker Protection Act will prohibit employers from requiring warehouse workers to meet quotas that would otherwise prevent compliance with meal or rest periods, prevent employees from using or traveling to the restroom, or prevent employees from taking steps to prevent musculoskeletal injuries or disorders, such as taking the additional time to use proper lifting techniques and using mechanical assistance when available.

Warehouse employers must also establish and implement an injury reduction program which includes a worksite evaluation, analyzes risk reduction factors, provides injury reduction training, and staffs any first aid or medical station with licensed practitioners. The law prohibits unnecessary delays in the provision of adequate medical care to workers who seek on-site medical treatment for injuries. The time that employees spend minimizing the risk of musculoskeletal injuries and complying with injury prevention protocols must also be considered productive time for purposes of monitoring employee performance.

The new law prohibits retaliation against workers who exercise their rights under the new law, including those employees who request information about productivity quotas. The new law also gives current and former employees a private right of action to bring claims and recover costs and attorney's fees for proven violations of the law, and may seek injunctive relief from a court to suspend impermissible warehouse quotas as a matter of law. Employees who prevail in their allegations of retaliation under the new law shall be awarded damages of the greater of \$10,000 or three times the amount of their actual damages.

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The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice related to pay transparency and job advertising-related issues, workplace protection issues, or any other employment law questions you may have.