

> Client Alert

Reminder to Employers: New York State Pay Transparency Law Goes Into Effect September 17, 2023

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As we previously noted in a prior Alert, Governor Kathy Hochul signed into law a pay transparency law for New York State that goes into effect on September 17, 2023. The New York State legislature subsequently amended the statute to clarify certain provisions, and these amendments, also signed by Governor, go into effect as well on September 17, 2023.

The new pay transparency law requires that employers with four or more employees in New York State disclose the compensation or range of compensation proposed to be paid to candidates for employment when advertising a job, job promotion, or transfer opportunity.

For purposes of disclosing compensation, the “range of compensation” is defined 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 earnings, the posting of an advertisement must include a general statement to that effect. Consistent with New York City’s pay transparency law (which went into effect on November 1, 2022), to advertise means “to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.”

The new pay transparency law applies to any position that will “physically be performed, at least in part, in the state of New York, *including a job, promotion, or transfer opportunity that will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York.*” In other words, the law expressly applies to certain remote positions, but does not apply to remote work opportunities performed entirely outside of New York with no supervision of the position from within the state of New York.

Although the New York State pay transparency law has much overlap with the existing New York City law, the new State law also imposes an additional requirement that if a job description exists for the position, it must be disclosed in the advertisement for a job, promotion or transfer opportunity. Employers, however, are not obligated to create job descriptions if none already exists. Like New York City’s law, New York State’s pay transparency law prohibits employers from retaliating against applicants or current employees who exercise their rights under this law. Since the law’s definition of retaliation,

however, is vague and open-ended, employers should take care not to take actions that could be perceived as dissuading employees from making even informal complaints in connection with a job posting.

Individuals who claim to be aggrieved by an employer's failure to post salary ranges or job descriptions in job postings can file a complaint with the Commissioner of Labor. Employers may be subject to civil penalties for failure to comply. The Commissioner has some discretion in the amount of the civil fine, which is based on factors such as the size of the business, whether the violation was intentional, and any past history of violations. However, fines cannot exceed \$1,000 for the first violation, \$2,000 for the second violation, or \$3,000 for the third or subsequent violation.

Unlike the New York City law, which provides a private right of action for current employees who are not informed of salary ranges in postings for promotional and internal transfer opportunities (but not new job applicants), the State pay transparency law does not provide a private right of action for current employees or applicants. Even without the threat of a lawsuit, however, employers should take steps to comply with the State law to avoid the aforementioned civil penalties and any negative publicity.

Employers will want to ensure they are prepared fully to comply with the new State law. The New York State Department of Labor is required to promulgate rules and regulations to effectuate the new law, which are expected soon. Employers will want to stay apprised of any applicable regulations and guidance offered regarding the implementation and enforcement of these employer responsibilities accordingly.

Our Labor & Employment Law team is available to provide legal advice and counseling related to pay transparency and job advertising-related issues, as well as any other employment law questions you may have.