

> Client Alert

New York City Law Requiring Salary Ranges in Job Listings Goes Into Effect November 1, 2022

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If you require any additional information regarding job postings or salary range information, or any other employment law questions, please feel free to contact any of the attorneys listed below.

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New York City's updated and revised amendments to the New York City Human Rights Law, which require employers to post salary ranges in job listings, go into effect on November 1, 2022. Beginning November 1, it will be considered an unlawful discriminatory practice in New York City for an employer of four or more employees to advertise a job, promotion, or work transfer opportunity without stating the minimum and maximum annual salary or hourly wage that the employer in good faith believes it would pay a suitable candidate for the position ("Salary Range").

We previously wrote on this topic in May 2022 after the New York City Council passed new amendments prompting a delay of the law's effective date by several months. You can find our previous post on this topic [here](#).

As of November 1, all covered employers operating in New York City and seeking to advertise for job openings (or advertising internal transfer or promotional opportunities) must include a Salary Range that indicates "the lowest to the highest annual salary or hourly wage the employer in good faith believes at the time of posting it would pay for the advertised job, promotion or transfer opportunity." Employers who fail to do so may be subject to investigation and prosecution by the New York City Commission on Human Rights (the "Commission").

Under the new law, anyone may report a perceived violation to the Commission, and those currently employed can bring an action in court against their employer for failure to include the Salary Range in advertisements for transfer, promotion, or other job opportunity. There is no private right of action, however, for prospective hires. The Commission may not levy penalties against first-time offending employers, so long as the violation is cured to the Commission's satisfaction within thirty days. Future or repetitive failure to comply with the new Salary Range law could result in monetary damages and/or civil penalties against employers of up to \$250,000.

The Salary Range disclosure law does not apply to staffing agencies' advertisements for temporary or part-time employment. Of particular note, under the updated amendments, the new law will also not apply to positions that cannot or will not be performed, at least in part, within New York City.

Gov. Hochul Considers Signing a Similar New York State Measure

The New York State legislature has passed a similar salary range bill, [S9427](#), which now awaits signature by the governor. It is also possible that Governor Hochul will propose amendments to the New York State bill, in which case it would not become law until such time as the legislature approves changes in an upcoming legislative session. Business advocacy groups have already lobbied for Governor Hochul to amend the bill to exclude salary information in advertisements for remote jobs performed outside of the state and these amendments remain under consideration.

The New York State bill, if signed by the governor in its current form, would require that job postings include the compensation or range of compensation for the job and a job description, if one exists, as well as disclose whether compensation is based solely on commission. Like the New York City law, the New York State bill defines the range of compensation as the Salary Range believed in good faith to be accurate at the time of posting. Violations can be reported to the Commissioner of the State Department of Labor (“DOL”), and an employer who fails to comply would be subject to a civil penalty. Employers would also be required to maintain records, including the history of compensation ranges, for each job and job description. The State bill, however, provides for no private right of action such that only the DOL could institute action.

Other states such as Colorado and Washington already require employers to post salary amounts or ranges in job postings. If signed, the New York State law would take effect 270 days after it is signed by Governor Hochul. California Governor Gavin Newsom recently signed into law a [bill](#), effective January 1, 2023, which will require employers of 15 or more employees to include compensation information, a job description, and a general description of benefits for any advertised position in all internal and external job postings within the State of California.

Next Steps for Employers

Returning to the New York City law, the Commission’s guidance clarifies that an employer’s four employees need not work in the same location and that “as long as one of the employees works in New York City, the workplace is covered.”

Covered employers advertising positions that can or will be performed, at least in part, within New York City should be sure to include the Salary Range in job listings beginning November 1, 2022. The Commission has issued [guidance](#) stating that it considers an “advertisement” to be any “written description”, including, but not limited to, internal advertisements, newspaper ads, internet advertisements, and printed flyers distributed at job fairs.

The “salary” that employers must disclose is the “base annual or hourly wage or rate of pay,” but does not need to include other forms of compensation or benefits offered, such as health insurance, overtime pay, commissions, tips, bonuses, and stock. Employers must include both a minimum and a maximum salary, but if the salary for the position is a fixed amount, the listing need only state the offered salary, for example, “\$20 per hour.” Employers are not permitted to post open-ended salary ranges, such as “\$20 per hour and up” or “starting at \$20 per hour.”

Employers should keep in mind that the New York City law does not prohibit employers from engaging in salary negotiations with either internal or external candidates. Nor does the law prevent an employer from making an offer above or below the Salary Range listed in the job posting, provided that the job listing reflected the employer’s good faith belief regarding the Salary Range at the time of posting. Employers are permitted to take into consideration the relative experience of the candidate(s), including, but not limited to, education, years of past experience, or specialized training. Additionally, an employer’s analysis of the Salary

Range available for particular positions should take into account any potential pay disparity of existing employees in comparable positions based on gender, as the new law is intended to provide greater pay transparency within workplaces and may thus necessarily give rise to Equal Pay Act-type gender discrimination claims.

Covered employers may include those located outside of New York City to the extent that they offer any job opportunities that may be performed remotely. To be safe, all covered employers should ensure compliance by including a Salary Range in advertisements for job opportunities for all positions unless the work is expressly that which will not be performed in New York City. Employers should add a Salary Range to any new job advertisement and any active posting expected to remain active on or after November 1, 2022, including postings for internal job transfers or promotions. Even where pay transparency laws do not apply to a job posting, employers should consider whether they may benefit from increased applicant interest and uniformity across job postings in different regions by including a Salary Range.

As previously covered in our prior Client Alerts [here](#) and [here](#), employers should be reminded that New York State and New York City prohibit employers from inquiring into salary history when hiring external candidates.

The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice related to Salary Range advertising issues, workplace issues applicable to the New York City Human Rights Law, or any other employment law questions.