

> Client Alert

New York City Provides Updated and Revised Amendments to Salary Range Requirements in Job Listings

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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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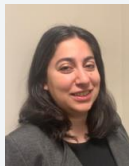
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On April 28, 2022, the New York City Council passed updated and revised amendments to the New York City Human Rights Law, initially scheduled to take effect on May 15, 2022. Under the updated amendments, which will now become effective on November 1, 2022, it will be considered an unlawful discriminatory practice in New York City for an employer to advertise a job, promotion, or work transfer opportunity without stating the minimum and maximum annual salary or hourly wage for the position ("Salary Range").

The law, which amends Sections 8-102 and 8-107 of the New York City Administrative Code, specifies that the Salary Range is the range "from 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 include the Salary Range in job advertisements may be subject to investigation and prosecution by the New York City Commission on Human Rights (the "Commission"). Enforcement can be initiated either by (i) a complaint filed with the Commission by an employee or a member of the public or (ii) independently by the Commission's Law Enforcement Bureau, based on testing, tips, and other sources of information.

The amended laws specify that if a violation is found, the employer will not be subject to any civil penalties for the first violation, provided that the violation is cured within 30 days. Failure to include the Salary Ranges in subsequent job advertisements, however, could result in monetary damages awarded to the affected individual(s) and/or up to \$250,000 in civil penalties.

Although anyone may report a perceived violation of the law to the Commission, only current employees may bring an action in court against their employer for failure to include Salary Range information in an advertisement for transfer, promotion, or other job opportunity.

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

New York State Considers Similar Measure

A similar measure is currently being considered by the New York State legislature. That bill, which is currently at the committee stage in the State Senate and on the calendar for consideration by the State Assembly, is broader than the New York City law and, if passed, would require that both internal and external job postings include compensation information, a job description, and a general description of benefits for the advertised position.

The New York State bill, if passed in its current form, would also require that job postings include “the range the employer actually relied on in setting compensation,” which may include a pay scale, compensation model, market data, or the actual salary range for those employees currently in the position. It would also require that employers provide employees with a job description and compensation range upon hire and at least once a year upon an employee’s request.

Next Steps for Employers

Employers advertising positions that can or will be performed, at least in part, within New York City should be sure to include a salary range in all job listings beginning November 1, 2022. This includes positions that may be performed remotely for employers located within New York City.

The Commission has specified that it will consider a job advertisement to be any “written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants.” Job advertisements may include, but are not limited to, postings on websites such as LinkedIn®, notices on internal workplace bulletin boards, “Help Wanted” ads in newspapers, and flyers distributed at job fairs. Employers are not required to create advertisements as part of the hiring process, and may continue to hire without the use of written job advertisements.

The Commission has specified that an advertised salary range will violate the new law if it states only, for example, “\$15 per hour and up” or expresses only the maximum salary. If the salary for the position is a fixed amount, however, the listing need only state the offered salary.

Other forms of compensation or benefits, such as employer-provided health insurance, paid time off, retirement plans, equity or potential bonus compensation need not be listed in the job advertisement. However, some employers may wish to include these details in job advertisements for other reasons, such as to ensure applicants’ knowledge that the job offerings are consistent with the market or to induce candidates to apply for the position.

The Salary Range may take into consideration that job offers and offered salary may also be dependent on the relative experience of the candidate(s), including, education, years of prior service, and other relevant experience. Additionally, an employer’s analysis of the Salary Range available for particular positions should take into account the potential pay disparity of existing employees in comparable positions based on gender, as the new law will lead to greater pay transparency within workplaces and may give rise to Equal Pay Act-type gender discrimination claims.

The new law does not prohibit employers from engaging in salary negotiations with either internal or external candidates, nor does it 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.

As previously mentioned in the 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. .