

NEW YORK'S NEW PAY TRANSPARENCY LAW

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On May 12, 2022, the New York City Human Rights Law was amended to require pay transparency in job advertisements effective November 1, 2022. Governor Kathy Hochul followed suit on December 22, 2022, when she signed into law New York State's new Pay Transparency Law. Even though the New York State law does not go into effect until September 17, 2023, any employer with at least one employee performing work in New York City, in person or remotely, is a covered employer under the New York City Law and will need to adjust your job advertisements now to comply with the City Law.

New York City's Pay Transparency Law requires all employers with four or more employees, or one domestic worker, to include a good faith salary range for any posted job advertisement. The range cannot be open ended, however, the minimum and maximum amounts may be identical if there is no pay flexibility in the advertised position. This new law does not apply to temporary help firms or to employers who fill positions through a non-competitive process or succession plan. However, this new New York City law *does* apply to employers outside of New York City so long as at least one employee performs work within New York City, either in person or remotely. Furthermore, the law also applies where there is a possibility that the advertised job *can* or will be performed, at least in part, within New York City. It is incredibly important to note that, unlike the New York State law, current employees actively employed at the time of filing the complaint are afforded a private right of action to sue an employer for violating the New York City Law. Affected employees can also file a complaint with the New York City Commission on Human Rights. The NYC Commission on Human Rights will not assess a penalty for the first complaint so long as the employer can prove that it as corrected the violation within thirty days of receiving notice from the Commission. However, an employer can thereafter face penalties up to \$250,000.00 for an uncured first violation as well as any subsequent violation.

Similar to its New York City counterpart, the New York State Pay Transparency Law applies to employers with four or more employees and requires a good faith compensation range in all postings for jobs, promotions, and transfer opportunities. Also like the New York City Law, this new State Law applies so long as the posted job can or may be performed within New York State, at least in part. The State law also requires that a posting for a position that is solely commission-

based must specifically so state within the job posting. More expansive than the New York City Law, the State Law requires employers to include a job description in their advertisements if one exists, but does not require an employer to create one for the purpose of compliance. Also more expansive than the New York City Law, the New York State law applies to postings for out-of-state employees if the employee will report to a New York office or manager. Unlike the New York City Law, there is no private right of action given to employees to sue an employer for non-compliance, but rather compliance will be monitored by the New York Department State of Labor and employers face penalties for non-compliance (up to \$1,000.00 for the first penalty, \$2,000.00 for the second penalty, and \$3,000.00 for the third).

All employers should take action now to assess whether you are considered an employer covered by the New York City Law so that you can get your job postings in compliance now. Employers subject only to the New York State Law should be working now with your human resources departments to ensure that you will be ready when the New York State Law goes into effect on September 17, 2023.