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New York City Enacts Pay Transparency Law Requiring Salary Ranges in Job Postings

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Adding to the growing list of jurisdictions that have passed pay transparency laws, effective May 15, 2022, employers in New York City will be required to include salary ranges in job postings.

Brief Summary

The new pay transparency law makes it an "unlawful discriminatory practice" under the New York City Human Rights Law ("NYCHRL") for an employer to advertise a job, promotion, or transfer opportunity without stating the position's minimum and maximum salary in the advertisement.

The salary range may include the lowest and highest salaries that the employer believes in "good faith" that it would pay for the job, promotion, or transfer at the time of the posting.

Notably, the law does not define "advertise" and it does not differentiate between jobs that are posted externally versus internally. The law also does not define a "salary," nor does it clarify the requirements for non-salaried positions.

Covered Employers

The law applies to all employers with at least four employees in New York City, and independent contractors are counted towards that threshold. Significantly, however, the law does not apply to temporary positions advertised by temporary staffing agencies.

Enforcement and Penalties

The New York City Commission on Human Rights is authorized to take action to implement the law, including, among other things, through the promulgation of rules and/or imposition of civil penalties under the NYCHRL.

Growing Trend of Pay Transparency Laws

New York City's pay transparency law is part of a growing trend in the United States.

In 2021, Colorado enacted a law that requires employers to disclose, among other things, the compensation or range of possible compensation in job postings. Of note, Colorado's law is more expansive than New York City's in that it requires employers with even one employee based in Colorado to post such salary information in any job postings for remote work (*i.e.*, work that is performable anywhere, including Colorado).

Last year, Connecticut and Nevada enacted similar pay transparency laws, and Rhode Island passed a law (effective January 1, 2023) which will require employers to provide wage or salary range information to applicants and employees under certain conditions.

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California, Maryland, and Washington also have laws requiring salary disclosure, but only upon the request of an applicant or employee, and each law's disclosure requirements vary slightly. Maryland, for example, requires disclosure of a position's wage range upon request of any applicant. In comparison, California requires disclosure upon request from applicants who have completed an initial interview and Washington requires disclosure upon request from applicants who have received an offer.

This trend appears poised to continue as other state legislatures, including Massachusetts and South Carolina, are considering pay transparency bills.

Similar to laws banning questions related to an applicant's salary history during the hiring process, these pay transparency laws are aimed at promoting equal pay. Where state or local law provide for a private right of action, employers may face "tag-along" claims alleging pay disclosure non-compliance in addition to claims of workplace discrimination and/or retaliation.

Takeaway

All covered employers in New York City should take steps to ensure compliance with these new pay transparency requirements effective May 2022. And, employers operating in multiple jurisdictions should carefully monitor the ever-growing patchwork of pay transparency laws in order to ensure compliance wherever located.

The following Gibson Dunn attorneys assisted in preparing this client update: Danielle Moss, Harris Mufson, Gabby Levin, and Meika Freeman.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or the following:

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