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New York State Enacts Pay Transparency Law

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On December 21, 2022, Governor Hochul signed into law Senate Bill S9427A, which amends the New York Labor Law requiring covered employers to list salary ranges in job postings and advertisements. The State law, which is scheduled to go into effect on September 17, 2023, largely tracks the New York City Pay Transparency Law that went into effect on November 1, 2022, but it has some notable differences.

Covered Employers

The law covers employers in New York with at least four employees, without specifying whether all employees, or only those employed in New York, count toward the threshold. Significantly, unlike the New York City law, independent contractors are not counted.

Covered Positions

The law applies to jobs that can or will be performed, at least in part, in New York State. The law likely covers job postings for remote positions performed from New York. However, it does not elaborate on the extent to which it applies to remote positions that could conceivably be performed from New York, even if they are ultimately performed from other states.

Employer Obligations

The law requires employers to disclose "compensation ranges" in advertisements and job postings for such positions, including those for new hires and internal promotions. The compensation range is the lowest and highest annual salary or hourly range of compensation that the employer believes in "good faith" to be accurate at the time of the advertisement or posting. For commission-based positions, employers may satisfy the disclosure requirement by stating in writing that the compensation shall be based on commission.

Unlike the City law, the State law also requires covered employers to: (1) include the job description in the posting or advertisement, if a job description exists; and (2) maintain a history of compensation ranges and job descriptions, if the descriptions exist, for covered positions. The law does not specify for how long employers must maintain these records.

The law also expressly prohibits employers from retaliating against applicants or employees who exercise their rights, including by filing a complaint with the New York State Department of Labor (NYDOL) regarding an actual or potential violation of the pay transparency requirements.

Enforcement and Penalties

The sole enforcement mechanism under the State law resides with the NYDOL, which can impose civil penalties for violations of the pay transparency requirements. NYDOL penalties are capped at one thousand dollars for an initial violation, two thousand dollars for second violations, and three thousand dollars for subsequent violations. Notably, unlike

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the City law, the State law does not give employers an opportunity to cure first-time violations before the imposition of any civil penalty.

The State law does not provide a private right of action for a violation. This contrasts with the City law, which permits employees (but not applicants) to file civil lawsuits against employers.

Compliance With The Patchwork of Pay Transparency Laws

New York's law is part of a recent wave of pay transparency laws enacted at the state and local level. In addition to states like California and Colorado, localities in New York, including New York City, Albany County, Westchester County, and Ithaca, have adopted pay transparency requirements.

Significantly, the State law contains an express provision stating it shall not supersede or preempt any local laws, rules or regulations. Therefore, by way of example, employers in New York City will be required to comply with both the state and city pay transparency requirements. Employers in Westchester County, however, will likely only be covered by the State law since the Westchester pay transparency law states that it "shall be null and void on the day that State-wide legislation goes into effect" that is "either the same or substantially similar" to the local ordinance.

Key Takeaways

The State law directs the NYDOL to promulgate applicable rules and regulations, so guidance may be forthcoming. Until then, covered employers in New York State should take steps to ensure compliance with the new pay transparency requirements starting in September.

The following Gibson Dunn attorneys assisted in preparing this client update: Harris Mufson, Danielle Moss, Alex Downie, and Michael Wang.

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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