

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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New York City Pay Transparency Law Update

On Jan. 15, 2022, the New York City council amended the City Human Rights Law to encourage equity and transparency in pay.¹ This amendment is part of larger national trend towards greater pay transparency. Several states have adopted similar laws, and the New York State legislature has introduced [pay transparency legislation](#) which is currently under consideration. On March 22, 2022, the City's Commission on Human Rights [issued guidance](#) for employers providing some much-needed clarity in advance of the effective date. This blog post will outline the requirements of the new law, informed by that guidance, and it will provide recommendations for what employers can do now to get ready for this new compliance obligation.

Requirements of the New Law. The New York City law requires covered employers to include the “minimum and maximum salary” for a position in any advertisement for a job, promotion or transfer opportunity where work can or will be performed in New York City. For purposes of this requirement, an advertisement is a written description of such job, promotion or transfer publicized to a potential pool of applicants. Internal and external postings are considered advertisements, and the requirement applies regardless of the medium in which they are distributed or publicized. The requirement applies to all postings where work can or will be performed in New York City, regardless of whether such work is performed in the office, from the field or remotely from an employee's home. Postings for “full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHRL” are all considered covered postings. Note, though, that the law does not affirmatively obligate employers to post an advertisement when hiring; the legal requirement to comply with this law only attaches when such an advertisement is being utilized.

An employer must make a “good faith” determination at the time of a job posting of the lowest and highest salary it would pay for that position, meaning the salary range the employer honestly believes that it is willing to pay the successful applicant. An employer cannot indicate an open salary range, and a minimum salary alone is insufficient to fulfil this requirement; however, where an employer does not have the flexibility to offer a range, “the minimum and maximum may be identical,” and the employer may simply list the salary. For any “[a]dvertisements that cover multiple jobs, promotions, or transfer opportunities,” the advertisement “can include salary ranges that are specific to each opportunity.”

Required salary disclosures must include the base wage or rate of pay, regardless of whether an employee is paid on a weekly, hourly, or flat-fee basis.² Salary does not include other forms of compensation or benefits beyond the base rate of pay such as bonus pay, overtime payments, severance pay, health insurance, retirement contributions and paid time off. Employers may include additional information about such benefits, but such information is not required.

¹ Local law 32 of 2022.

² The disclosure requirement is not limited to FLSA-exempt employees (sometimes colloquially referred to as “salaried” employees).

The law applies to all employers currently covered by the city's human rights law: those with four or more employees or one domestic worker.³ For purposes of meeting this threshold, a workplace is deemed covered if one employee works in New York City.

The City Commission on Human Rights will enforce the new law, which, as of this writing, goes into effect on May 15, 2022. Failure to comply will constitute an unlawful discriminatory practice and could result in an award of monetary damages to affected employees and civil penalties of up to \$250,000. Employers found in violation of the law may also be required to amend advertisements, revise policies, conduct training and engage in other forms of affirmative relief as required by the Commission.

Recommendations for Timely Compliance. Covered employers can take several steps now to facilitate compliance with this new requirement when it goes into effect in May. First, employers should ensure their current pay practices are up to date and align well with their institutional missions and strategic plans. Second, employers should consider conducting a pay equity audit to assess current issues of equity in pay. We recommend such audits be conducted at the direction of counsel to ensure the analysis addresses all areas of potential legal risk and to preserve the attorney-client privilege. Third, we recommend that employers work with counsel to obtain legal advice on how to address any discrepancies in current pay practices to further promote internal equity. Finally, we recommend that employers develop and implement onboarding practices that comply with the new law and are informed by the findings of the pay equity audit. This strategy should include the development and implementation of training for key stakeholders within the institution.

If you would like any assistance in preparing your organization for compliance with the New York City pay transparency requirement, please contact [Sarah Luke](#), [Lisa Feldman](#), any attorney in our [Labor and Employment practice](#) or the attorney at the firm with whom you are regularly in contact.

³ Employment agencies are considered covered employers regardless of their size and must comply with the requirements of this law in all postings. An exception exists for temporary help firms who recruit applicants for their pool of available workers. However, employer-clients of such firms must still comply with this law if they are otherwise covered employers.

