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NYC Commission on Human Rights Issues Guidance on Salary Disclosure Law

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The New York City Commission on Human Rights (NYCCHR) has released a fact sheet providing some additional details and guidance regarding the upcoming salary disclosure law.

As we previously reported, the new law will make it an unlawful discriminatory practice under the New York City Human Rights Law (NYCHRL) for a covered employer or its agent, or for an employment agency, to advertise a job, promotion or transfer opportunity without stating a "good faith" minimum and maximum salary for the position in question.

As enacted, the law will take effect on May 15, 2022 and will apply to employers with four or more employees. However, as we recently reported, a bill was just introduced before the New York City Council that would, among other things, push the effective date of the law to November 1, 2022 and exclude employers with fewer than 15 employees (as opposed to the current four employee threshold) from coverage.

The following are some highlights from the new guidance issued by the NYCCHR, which is drafted pursuant to the current version of the law:

Covered Employers

The law applies to employers with four or more employees, regardless of location, so long as at least one employee is working in New York City. Employment agencies are covered by the law, regardless of their size.

Temporary help firms seeking applicants to join their pool of available workers are not covered by the law. However, NYC employers who work with temporary help firms are covered by, and must follow, the law.

Covered Advertisements

The guidance defines an “advertisement” as a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants, regardless of the medium in which it is disseminated. This includes postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements. However, the guidance clear that the law does not prohibit employers from hiring without using an advertisement, nor does it require employers to create an advertisement in order to hire.

The law covers any advertisement for a job, promotion, or transfer opportunity that “can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee’s home.”

Advertisements are covered by the law “regardless of whether they are seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHRL.”

Defining a Good Faith Salary Range

As noted above, the law prohibits a covered entity from advertising a job, promotion or transfer opportunity without stating a “good faith” minimum and maximum salary for the position in question. The guidance defines “good faith” as “the salary range the employer honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).”

Employers must include both a minimum and a maximum salary and the range cannot be open ended. For example, “$15 per hour and up” or “maximum $50,000 per year” would not be consistent with the requirements of the law.

If an employer has no flexibility in the salary they are offering, the minimum and maximum salary may be identical (for example, “$20 per hour”).

Defining “Salary”

The guidance provides that “salary” under the law includes the base wage or rate of pay, regardless of the frequency of payment (for example, it would include an hourly wage of $15 per hour or an annual salary of $50,000 per year).

However, in a welcome clarification for employers, the guidance states that "salary" does not include other forms of compensation or benefits offered in connection with the position, such as:

- health, life, or other employer-provided insurance;
- paid or unpaid time off work, such as paid sick or vacation days, leaves of absence, or sabbaticals;
- the availability of or contributions towards retirement or savings funds, such as 401(k) plans or employer-funded pension plans;
- severance pay;
- overtime pay; or
- other forms of compensation, such as commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging.

Enforcement and Penalties

The guidance provides that the NYCCHR will accept and investigate complaints for violations of the law filed by members of the public, and states that its Law Enforcement Bureau may also initiate its own investigations based on testing, tips, and other sources of information.

Covered entities found to have violated the law may be liable for monetary damages to affected employees, as well as civil penalties of up to $250,000. Covered entities may also be required to amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

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We will continue to closely monitor and report on further developments with regard to this law.

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