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New York City's Pay Transparency Law Takes Effect in One Month – Are You Ready?

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New York City's pay transparency law, which will require most New York City employers to disclose salary ranges in their job postings, takes effect November 1, 2022. As we previously reported, the new law amends the New York City Human Rights Law to require covered employers who post a job, promotion, or transfer opportunity for a position that can or will be performed, at least in part, in New York City to disclose the minimum and maximum annual salary or hourly wage that the employer in good faith believes it would pay for the position.

Covered employers include those who have four or more employees (including independent contractors and owners), or one or more domestic workers, so long as at least one of the employees works in New York City. The law additionally covers employment agencies of all sizes. However, "[j]ob advertisement[s] for temporary employment at a temporary help firm," such as a staffing agency, are exempted from disclosure requirements.

Guidance issued by the NYC Commission on Human Rights (the "Commission") provides that the "salary" employers must disclose is the "base annual or hourly wage or rate of pay," and it need not include "other forms of compensation or benefits offered in connection with the advertised job," such as health insurance, severance pay, overtime pay, commissions, tips, bonuses, and stock. Employers must include both a minimum and a maximum salary, but if the employer has no flexibility, they are permitted to post a salary where the minimum and maximum salary are identical, for example, "$20 per hour." The employer cannot, however, leave the salary range open-ended, such as by stating "$15 per hour and up."

A statewide bill proposing a similar pay transparency law was passed by the New York State Legislature in June 2022, which we reported on previously. The bill is currently under consideration by Governor Hochul, and, if enacted, will take effect 270 days after it is signed into law.

What Should Employers Be Doing to Prepare?

- Prior to November 1, covered employers should account for any positions they anticipate advertising (or continuing to advertise) with covered job listings. Commission guidance states that "the law does not prohibit employers from hiring without use of an advertisement, or require employers to create an advertisement in order to hire." Accordingly, employers are not required to disclose a salary for a position that they do not plan to "advertise." However, covered job listings are defined broadly to include any advertisement that includes a "written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants" (which may include existing employees) and includes advertisements "on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements."
- For covered jobs they intend to advertise, employers should review their job descriptions and determine in good faith the position's target salary range. Employers should consider whether to internally document the factors used to determine the salary range for a given position and/or provide some information in the job posting itself about the factors that may impact what salary within the stated range may be offered to any particular candidate (*e.g.*, years of experience, level of education obtained, etc.).
- Employers should be prepared to add the target range to new listings as well as any active listings on the company's website or third-party job-posting websites (such as LinkedIn or Indeed), if the listing is likely to remain active past the November 1 effective date. Employers should ensure the target salary range is included on every job listing posted on the company's website or intranet, disseminated online, or otherwise advertised with a written description, including through an employment agency, to the extent the employer controls or could reasonably control the job listing.
- Covered employers outside New York City should ensure they include target salary ranges in advertisements for positions unless the position expressly cannot be performed in New York City. This is especially relevant for fully remote positions that arguably could be performed from anywhere, including NYC.
- Employers with operations both within and outside of New York City (or who are posting for fully remote positions) will also need to consider whether any other state or local pay transparency laws may apply to their job postings and ensure compliance accordingly. Even if no pay transparency laws apply to a given posting, employers should still consider whether they nevertheless would prefer to have uniformity across all job postings or whether salary range information will only be included in postings for roles that can be performed in NYC (or any other jurisdiction with a similar pay transparency law).

We will continue to monitor and report on further developments regarding this law once it goes into effect.

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