

[Podcast]: NYC Council Considers Expanding the City's Pay Transparency Law

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In this episode of The Proskauer Brief, partners [Evandro Gigante](#), [Allan Bloom](#) and special employment law counsel [Laura Fant](#) discuss the New York City Council's recently proposed amendments to the city's pay transparency law. Presently, an employer is only required to include the “base annual or hourly wage or rate of pay” and not other forms of compensation or benefits offered. The proposed amendment would expand these obligations to: (1) require that jobs, promotions and transfer opportunities include “a description of the job, promotion or transfer opportunity and the non-salary or non-wage compensation for such position” in the posting; and (2) that employers disclose to current employees – on an annual basis as well as upon an employee’s request – the “range of compensation” for that employee’s job title, including bonuses, benefits, stocks, bonds, options and equity or ownership.

Allan Bloom: Hello and welcome to The Proskauer Brief: Hot Topics on Labor and Employment Law. My name is [Allan Bloom](#) and I'm a partner in Proskauer’s New York office. I'm here today with my colleagues [Evandro Gigante](#) and [Laura Fant](#) to talk about the New York City Council's recently proposed amendments to the city's pay transparency law, also known in some circles as the salary range disclosure law. Laura, can you share some of the background here on the law that the City Council is proposing to amend?

Laura Fant: Absolutely. Thank you, Allan. So, as many of our listeners are probably aware, effective as of November 1st of last year, 2022, New York City enacted a law that requires covered employers, and covered employers are defined as those who have four or more employees, at least one of whom works in New York City, requires those covered employers who wish to post a job, promotion, or transfer opportunity that either will or can be performed in New York City to disclose in that posting the minimum and maximum annual salary or hourly wage that the employer believes in good faith they will pay for the position. Now, under the law as it currently exists, salary is defined as the base annual or hourly rate of pay for the role, and expressly does not include other forms of compensation or benefits, such as bonuses, insurance, equity options, etcetera. Now, that is where this current amendment comes in and I'm going to pass it off to Evandro to tell us a little bit more about what this amendment looks like.

Evandro Gigante: Thank you, Laura. So, the proposed amendment would actually expand these obligations, really in two ways. First, to require that advertisements and postings for jobs, promotions, and transfer opportunities include and I quote, "A description of the job, promotion, or transfer opportunity and the non-salary or non-wage compensation for such position" and the proposed amendment goes on to describe such non-salary or non-wage compensation to include such things as bonuses, benefits, stocks, bonds, options, and equity or ownership, if any. That's the first way that the law would amend the existing pay transparency statute.

Secondly, the proposed amendment would also make it unlawful for employers to fail to disclose to their current employees, on an annual basis as well as upon request by the employee, the range of compensation for that employee's job title. And that range of compensation would include, under this amendment, bonuses, benefits, stocks, bonds, options and equity ownership. Now, in light of these two proposed elements to this amendment, Allan, what are some of the open questions that employers should be thinking about?

Allan Bloom: There are a number of open questions under the proposed amendments. It really, in my view, needs some work if it's going to be something the City Council expects employers to understand and comply with. Let's start with the first substantive amendment requiring employers to include in an advertisement or a posting "A description of the job, promotion, or transfer opportunity and the non-salary or non-wage compensation for such position." A description of the job itself is easy enough. But, does the City Council expect a description of the non-salary or non-wage compensation for the position? Or is it the non-salary or non-wage compensation itself? In other words, it's unclear whether the word description in that paragraph applies to both the job and the non-salary compensation portions of that job. So, I think we're going to need some more clarity around that particular provision.

When you go to the next section on the annual or on demand disclosure of the range of compensation, which includes, as Evandro said, bonuses, benefits, stocks, bonds, options, equity, ownership. How exactly would you state a range of benefits or a range of stock or bonds or a range of equity or ownership? Those are not numerical or dollar amount ranges like a salary or an hourly range. So, what kind of range is the City Council expecting? A range of benefits that are available to employees in that title in some order? A range of how many shares of stock or how many options were awarded that year to employees in that job title? Or in some trailing period of time? That's unclear as well. The amendments do not say exactly when the range should cover, what period of time, because it's not just annual, it's also on demand. So, all of that to me is unclear.

What's also unclear is that you have to make that disclosure for an employee's job title. And job title can mean different things at different employers. There can be functional titles, there can be titles within an organizational chart. So, to me that's also unclear as to who exactly the disclosure would have to be made, and I think that's something that's going to cause employers quite a bit of concern as they think about having to come into compliance with this amended rule. So, Laura, what are the next steps?

Laura Fant: So, presently, the amendment is before the City Council's committee on Civil and Human Rights. So, the first step is for the committee to consider this bill. And part of the consideration process is that the committee will host a hearing on the bill, which will presumably give employers and other stakeholders on this amendment a chance to voice their opinions and be heard on their thoughts on the bill, concerns they may have on the bill, and to put forth even potential ideas for amending the bill as it currently stands.

And then at that point, the committee may consider making some amendments to the bill. And then in whatever form the bill stands at the end of that process, the committee will take a vote. And if a majority of the vote approves it, it will move forward to be heard before the entire City Council, at which point the Council can either vote to accept and pass the bill, or not. Assuming that some version of the bill does pass the entire City Council, then it goes before Mayor Adams, and Mayor Adams really has three options. He can sign the bill to approve it. He can veto the bill; in which case the committee can actually go back and upon a 2/3 vote, vote to overturn that veto. The mayor can approve it, he can veto it, or the mayor can take no action on the bill. And if the mayor takes no action on the bill for 30 days, then the bill does automatically move into law upon that no action. And interestingly, that is the approach that Mayor Adams took when the underlying existing pay transparency bill came before him. So, it'll be interesting to see if he considers taking a similar approach here, or if he actually kind of comes out and has a little bit more to say on the matter this time around.

So, Evandro, to wrap up today, if you could let us know, assuming that the Council does pass this bill and the mayor either approves it or it otherwise becomes law, when would it take effect? And what should employers be thinking about in connection with that?

Evandro Gigante: The law, according to the City Council's bill summary, would become effective 120 days after it becomes law. So, to your point, if the mayor signs the bill or if the mayor doesn't do anything on the bill for 30 days and it becomes law that way, then 120 days thereafter it would come into effect. Now, interestingly, the initial pay transparency law that came into effect last year also had a 120-day period before it became effective, but that effective date was pushed back by about six months right before the bill was supposed to become effective in order to give employers sufficient time to change their processes and come into compliance. Of course, it remains to be seen here whether anything like that would happen.

Now on your question of what employers should be doing now to prepare, I think it's a bit early to necessarily say that employers should be collecting the information necessary to comply with this proposed amendment as it currently reads. What I do think, though, is that employers should be monitoring the bill. I do think it's also a bit too early, however, to say whether the proposed amendment will pass or not. And if it does pass, whether it would pass in its current form. As you pointed out, Laura, there are various points in the legislative process when the bill could be revised or amended by different members of the City Council. What I will say, though, is that it is important for employers to monitor these developments, which of course, we will be doing on our [Law In The Workplace](#) blog to make sure that employers are up to date on what the latest developments are, whether it looks as though the bill is going to pass, whether the bill has been revised or amended and of course, if it does pass, when that amendment would go into effect.

Allan Bloom: Thank you, Evandro, and thank you, Laura, and thank you for joining us today on The Proskauer Brief. Stay tuned for more insights on the latest hot topics in labor and employment law, and be sure to follow us on Apple Podcasts, Google Podcasts and Spotify.

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