

## **NEW YORK CITY PROVIDES GUIDANCE ON PAY TRANSPARENCY LAW AND NYC COUNCIL PROPOSES AMENDMENTS**

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Since 2020, New York State (“NYS”) and New York City (“NYC”) have passed laws aimed at alleviating gender- or race-based wage disparities.

On January 6, 2020, NYS banned all employers – both public and private – from asking job applicants and current employees about their salary history and compensation.

On January 15, 2022, NYC took the matter a step further and enacted the [Pay Transparency Law](#) (the “Law”) which makes it an “unlawful discriminatory practice” under the New York City Human Rights Law (“NYCHRL”) for an employment agency, employer, employee or agent to advertise a job opening, promotion or transfer opportunity, in NYC, without providing the position’s minimum and maximum salary. The Law, which goes into effect on May 15, 2022, left many open questions such as: does the Law apply to non-salaried positions (e.g. hourly workers), internal job openings that are not “advertised” to the public, or remote positions that may, but not required to, be performed in NYC? It was also unclear whether other forms of compensation (such as bonuses, stock options, or contributions to retirement plans) had to be included in the job “advertisements,” and even more generally, what constituted as an “advertisement.”

On March 22, 2022, the New York City Commission on Human Rights (“NYCCHR”), the agency tasked with enforcing the NYCHRL, issued a fact sheet (the “Guidance”) to aid workers and employers in understanding their rights and obligations under the new Law and answering some of the open questions, as explained below.

### **Covered Employers**

As with other provisions of NYCHRL, “covered employers” are those with at least four employees (or one or more domestic workers), and employment agencies regardless of their size. For purposes of counting employees, employers are required to include full-time and part-time employees, paid interns, domestic workers, owners, family members who are employees, independent contractors working in furtherance of any employer’s business enterprise, and any other category of worker

protected by the NYCHRL. The Guidance provides that Pay Transparency Law coverage is triggered as long as one of the employees works in NYC.

The Law does not apply to temporary positions at a temporary staffing firm (“temp agency”) as they are already required to provide wage information in compliance with New York State Wage Theft Prevention Act. Temp agencies are defined as those who recruit, hire and assign their staff to other employers to support or supplement their workforce or assist in a special project. While temp agencies are excluded, covered employers who work with these agencies are not.

## **Covered Advertisements**

According to the Guidance, any written description regarding an available job, promotion, or transfer opportunity that is publicized internally or externally and could be performed in NYC must comply with the Pay Transparency Law. Some examples of job advertisements that are covered by the Law are:

- Postings on internal bulletin boards;
- Internet advertisements;
- Printed flyers distributed at job fairs; and
- Newspaper advertisements.

Employers are not prohibited from hiring, promoting or transferring an employee without using an advertisement. Therefore, the Law does not apply to employers who choose to hire, promote or offer a transfer opportunity without a “written” description. Notably, the Law applies to positions whether they are performed at the employer’s location, at an alternate work location, or at a remote location selected by the employee, provided the position could be performed, in whole or part, in NYC.

## **Disclosure Requirements in Job Advertisements**

Employers are required to include the minimum and maximum salary for a position based on the employer’s good faith belief of what the employer would pay a successful job applicant, at the time the job advertisement is posted. The Guidance makes clear that the salary range cannot be open ended (e.g. “\$15 per hour and up” or “maximum \$50,000 per year”). Where there is no flexibility in the wage or salary being offered, the salary range may be a simple statement of pay offered rather than a range (e.g. “\$20 per hour” or \$50,000 per year). Note that employers cannot avoid specifically listing a salary range by including multiple jobs in a posting and setting forth a total range for all jobs; rather, a salary range must be separately stated for each position included in the advertisement.

Notably, the NYCCHR does not interpret the “salary” disclosure requirement to include other forms of compensation or benefits such as tips, bonuses, stocks, overtime pay, severance pay, paid time off, health benefits, employer contributions to retirement or savings plans, or value of employer-provided meals or lodging.

## **Penalties and Fees for Violations**

The NYCCHR is authorized to investigate complaints by the public or initiate its own investigation into violations of the Law. Violators could be forced to pay monetary damages to the affected employee and a civil penalty of up to \$125,000, or up to \$250,000 for a willful, wanton or malicious violation. In addition, a covered employer who is found to have violated the NYCHRL may be required to amend the offending advertisement, create or update employment policies, conduct trainings, provide notices of rights to covered employee or applicants, and engage in other forms of remedial relief.

## **NYC Council Proposes Amendments to the Law**

On March 24, 2022, a bill to amend the Pay Transparency Law was proposed by Council Members Nantasha M. Williams and Justin L. Brannan (“[Proposal](#)”). If enacted, the Proposal would delay the effective date of the Law to November 1, 2022 in order to give covered employers (which the Proposal seeks to change to employers with fifteen (15) or more employees) more time to implement the salary disclosure requirements. In addition to applying the law to slightly larger employers and delaying implementation, the amendments most notably would reverse NYCCHR’s Guidance which applies the salary disclosure requirement to remote positions that may be performed in NYC. Rather, the Proposal would specifically exclude from coverage remote positions that are not required to be performed, at least in part, in NYC.

## **Next Steps for Covered Employers**

As the effective date of the Pay Transparency Law is fast approaching (if not amended), employers should take immediate action to ensure compliance with the new law. Employers should:

- Review and familiarize themselves with the Law to determine whether the employer advertises positions that may be performed in NYC.
- Notify and train employees and recruiters who are responsible for posting job advertisement on the new Law.
- Implement policies to ensure that written advertisements for job openings, promotions or transfer opportunities that may be performed in NYC (either at employer’s workplace or remotely if job applicant is located in NYC) include salary information.
- Analyze the impact that salary disclosure requirements may have on the organization and develop a plan for handling requests for raises, employee discontent and attribution.

- Conduct an internal audit of current employees' compensation (particularly those located in NYC) to determine whether there are significant wage disparities. Consult with legal counsel if there are significant differences between employees in the similar position.
- Maintain documentation to support compensation decisions in case of pay discrimination lawsuits and/or NYCCHR investigations into complaints of wage disparities that appear to be based on a protected characteristic such as race or gender.

We will continue to monitor any new developments in the Pay Transparency Law and the proposed amendments, and provide updates.

*Bryan Cave Leighton Paisner LLP has a team of knowledgeable employment lawyers and other professionals. If you or your organization would like more information on this or any other employment issue, please contact any attorney in our [New York City office](#) or the [Employment and Labor practice group](#).*

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