

## **NEW YORK CITY'S PAY TRANSPARENCY LAWS**

March 9, 2023

The salary disclosure law, which went into effect November 1, 2022, makes it an “unlawful discriminatory practice” under the New York City Human Rights Law (“NYCHRL” or “Law”) 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 annual salary or hourly wage.

### **COVERED EMPLOYERS AND ADVERTISEMENTS**

As with other provisions of NYCHRL, “covered employers” are those with at least four employees if one employee is in NYC (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.

Any written description regarding an available job, promotion, or transfer opportunity that is publicized internally or externally and could be performed, in whole or part, in NYC, either at the employer’s location, at an alternate work location, or at a remote location selected by the employee, 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 AND ADVERTISEMENTS NOT COVERED**

The Law does not apply to temporary positions at a temporary staffing firm (“staffing agency”) as they are already required to provide wage information in compliance with the New York State Wage

Theft Prevention Act. A staffing agency is a company who recruits, hires and assigns their staff to other employers to support or supplement their workforce or assist in a special project. While staffing agencies are excluded, covered employers who work with these agencies are not. 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.

## DISCLOSURE REQUIREMENTS IN JOB ADVERTISEMENTS

An employer is required to include the minimum and maximum “annual salary or hourly wage” for jobs, promotions, or transfer opportunities 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. Notably, the New York City Commission on Human Rights (“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. In addition, current employees can file a lawsuit against their current employer in court.

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 upon a finding that employer’s actions were willful, wanton or malicious). However, first time violators can have their civil penalty reduced to \$0 if they submit proof, electronically or in person, that the alleged violation was cured within 30 days of service of a complaint by the NYCCHR. The submission of proof of a cure is “deemed an admission of liability for all purposes” including for use on a subsequent violation to prove willful, wanton or malicious conduct.

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.

## KEY DIFFERENCES OF NEW YORK STATE AND NEW YORK CITY TRANSPARENCY LAWS

New York State’s pay transparency law explicitly provides that it does not supersede or preempt local laws or regulations. New York City employers will need to comply with both NYS and NYC laws. While there are many similarities, NYS’s law differs in that it does not apply to advertisements for independent contractors or interns; requires a job description, if one exists, in the advertisement; and provides no private right of action for current employees against their current employers.

## MEET THE TEAM



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