

September, 2022

New York City's Pay Transparency Law Takes effect November 1, 2022

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New York City's Pay Transparency Law that was set to take effect on May 15, 2022, has been pushed to November 1, 2022, due to amendments that were pending before New York City Council in April of this year.

As Mazzola Lindstrom LLP laid out in an earlier version of this alert, New York City employers will be required to include the minimum and maximum salary range for the position advertised for a job, promotion, or transfer opportunity. Many of the original terms still stand such as the types of employers and job postings to which this law extends: employers with four or more employees, with at least one employee based in New York City; external and internal job postings seeking full-time and part-time employees, interns, domestic workers, independent contractors, and other categories of workers protected by the New York City Human Rights Law ("NYCHRL"); and employment agencies, regardless of size.

As indicated above, the effective date of this law was extended by nearly six months due to pending amendments. Amendment 134-A eliminated the broad private right of action that was available to New Yorkers in the original bill. Now, only current employees may bring an action against their employer for violation of this law meaning that applicants will have no recourse for non-compliant positions listed.

The original version of the law failed to define key terms—namely, 'advertisement' and 'salary'—and was unclear on the potential effect on hourly workers. 'Advertisement' is now broadly defined as "a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants" via postings on internal bulletin boards, internal advertisements, printed flyers distributed at job fairs, newspaper advertisements or any other medium. In the amended law, 'salary' will still require a minimum and maximum including the base annual or hourly rate of pay; however, employers aren't required to pay someone within that range (though they are required to post the range with the good-faith belief that they will pay an employee within that range). Additionally, the law does not require other benefits to be advertised.

As salary transparency laws become more popular across the country, multiple jurisdictions in New York have been keeping pace. Along with the New York State Legislature passing a salary transparency bill on June 2, 2022, the City of Ithaca and Westchester County both have bills coming into effect on September 1 and November 6 of this year, respectively. The New York State Legislature's bill will come into effect 270 days after Governor Hochul signs it.

In the meantime, employers in New York City should ensure that their hiring efforts are in compliance with the new law. This should include: assessing good-faith salary ranges for each position and aligning current employee salaries with those that will be posted after the new law takes effect; reviewing and editing job descriptions advertised after the new law's effective date; and revising HR-related documents and internal policies and practices that may conflict with the law. Employers can face up to \$250,000 in fines for non-compliance.

Even for employers based outside of New York, it may be worth taking note as we see other states, such as California, Colorado, and Washington, take steps towards salary transparency indicating more laws like this are likely to come.