

## State-Wide Pay Transparency Law to Go Into Effect September 2023



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On December 21, 2022, Governor Kathy Hochul signed into law an amendment to the New York State Labor Law that will significantly affect the way all but the smallest of private employers in New York State advertise open positions (the “Pay Transparency Law”). The new law does not take effect until September 17, 2023, but covered employers are advised to begin taking steps to ensure compliance immediately.

The amendment adds Section 194-b to the New York Labor Law. Section 194-b makes it unlawful for any private employer with four or more employees to advertise a job, promotion or transfer opportunity that can or will be performed, at least in part, in New York State, without disclosing the compensation or range of compensation for the job and the associated job description, to the extent one exists. For jobs or positions compensated *solely* by commission, employers may comply by including a general statement that compensation is based on commission. The term “range of compensation” is defined as the minimum and maximum annual salary or hourly range of compensation that an employer believes in good faith to be accurate at the time the advertisement is posted.

The Pay Transparency Law is broad in scope and contains exceptions only for employers with three or less employees. The new law also covers individuals or entities acting as employment agents or recruiters but does not include temporary help firms as defined in New York Labor Law § 916(5). The Pay Transparency Law is also significant in terms of potential coverage because it applies to advertisements for opportunities that can or will be performed, at least in part, in New York State. Theoretically, this new law will have a sweeping impact on employers within and outside the State of New York as it appears to apply to any listing for a remote position as the position could be filled by an applicant who lives and works, at least partially, in New York State.

Covered employers are required to maintain records demonstrating compliance for each advertisement and are prohibited from retaliating or otherwise taking an adverse employment action against applicants or employees (including by refusing to interview, hire or promote) for exercising any rights under the law.

While this law does not allow aggrieved applicants and employees to sue employers, any such applicant or employee may file a complaint with the Commissioner of Labor. Covered employers face penalties of up to \$3,000 for violations of the law or any related regulations (which are expected to be promulgated prior to the effective date of the law).

The Pay Transparency Law leaves several significant questions unanswered that the anticipated regulations may address. For example, the law does not define the term “advertisement” so the scope of the law’s application to forms of direct recruitment and internal promotion are unclear. Moreover, it is unclear the extent to which employers will be deemed to have complied with the law by the inclusion of ultra-wide pay ranges, a tactic some employers employed in response to a similar law which went into effect in New York City in November. If New York City’s guidance is any indication, the regulations may clarify these and other open questions in the most generous and protective way to applicants and employees.

With the addition of this law, New York State continues its trend of enacting laws intended to increase and protect workers’ rights. New York State now joins the ranks of other municipalities in our state, such as New York City, Westchester County and Albany County, which have enacted similar pay transparency requirements. Notably, the state-wide Pay Transparency Law does not preempt or supersede any provisions of local law, so employers covered under such local laws must continue to comply with any related requirements to the extent they exceed the rights and obligations set forth in the state-wide Pay Transparency Law.

There are several ways employers can start preparing for the implementation of this new law in nine months. Employers should consider conducting internal pay audits to ensure compliance with pay equity laws and be able to identify lawful criteria and factors to support pay differentials if there are inconsistencies identified. Not only is this important from a compliance perspective but it will also allow employers to manage employee morale and will give employers time to consider making adjustments or proactively explain compensation rationale to employees prior to disclosure of compensation ranges in advertisements for positions already held by their current workforce. Conducting pay audits will also provide employers with appropriate factors to consider in establishing compensation ranges for positions in advance of having to publish any advertisements. Employers should consider completing the audit and the position analyses well in advance of the new law’s effective date. Documenting the analysis and lawful and objective factors considered in establishing compensation ranges as well as consistency in the application of the factors across positions will help employers with compliance.

Employers should also identify managers who will be responsible for recruiting and establishing compensation

ranges and then train these managers in pay equity laws and the requirements of this new law.

If you have any questions about the Pay Transparency Law, please contact [Amy Habib Rittling](#) (716.853.5100 x1276), [Andrew Drilling](#) (716.853.5100 x1253), or any other member of our Employment Practice team.