

PRACTICAL NEWS
LEGAL ALERTS
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New York State Pay Transparency Law Takes Effect September 17, 2023

New York employers with four or more employees must comply with certain statutory disclosure requirements when advertising for positions physically within and some outside the workplace or office. The law applies to advertising for available jobs, promotions, and transfer opportunities. “Covered employers” also includes employment agents, agencies, and recruiters regardless of size, excepting temporary help firms. “Advertise” is defined as “to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.”

The law does not require that employers advertise available positions or opportunities. It does require that all such advertisements adhere to and comply with the statutory prerequisites. Based on recent amendments, the law will cover advertising for an available position which “will physically be performed, at least in part,” in New York and an available position which “will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York.” This amendment was designed to address and clarify previously-outstanding questions regarding coverage of remote workers.

Presently, all covered employers must comply with the following four requirements when advertising for such available positions. These requirements are subject to further clarification and refinement based on rules and regulations to be promulgated by the New York State Department of Labor (“NYSDOL”) which is the agency mandated to implement, interpret, and enforce this law.

Compensation or range of compensation

Employers must disclose the compensation or range of compensation for the available positions advertised. The range of compensation means the minimum and maximum annual salary or hourly range of compensation. Employers should equate salary with base salary when preparing such advertisements since employers are neither required to consider nor include benefits (such as health or life insurance, 401(k) or pension plans, bonuses or stock options) when calculating this range of compensation.

This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

Accuracy at the time of the advertisement

Employers must base the range of compensation on a good faith belief in its accuracy at the time of the advertisement. Although the law, as recently amended, no longer requires employers to maintain records reflecting the pay histories of the advertised available positions, employers should maintain such written proof or other contemporaneous documentation or records to corroborate and justify the range of compensation if and when subject to agency inquiry.

Commission-based pay

Employers must provide a general statement that compensation is based on commission for a position to be paid “solely” on commission. Employers are not required to provide a range of compensation for any such available positions. However, the law does presuppose that employers must provide a range of compensation for available positions to be paid both by commission and any other method of compensation where a range can be provided.

Job Descriptions

Employers must disclose job descriptions of the available positions advertised if such descriptions already exist. Employers are neither required to prepare nor create such job descriptions to comply with this law.

The law further provides that covered employers are subject to civil penalties for violations of the law itself, any regulations enacted in connection with the law, and for any retaliatory actions taken against applicants or current employees for exercising any rights referred to or contained in the law. There is no private right of action against employers under this law. All complaints must be brought to the NYSDOL which is empowered to investigate and render determinations based on its findings.

This law does not supersede or preempt any provisions of local laws, rules or regulations. All other previously-enacted local pay transparency laws remain in full force and effect for Albany County, Ithaca, and New York City, except Westchester County (which calls for its immediate nullification upon the effective date of this state law.) As such, New York employers are required to maintain compliance with this most recent state law and with all other relevant local laws presently in effect where the employer does business.

Stay tuned for NYC to enter the amendment game

The state amendments may not be the only change to New York pay transparency laws. Proposed amendments to the NYC pay transparency law have been referred to the Committee on Civil and Human Rights for further review.

For more information about the New York State Pay Transparency Law and related local laws, please feel free to contact the attorneys within our Employment & Labor Law Practice.

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