



April 29 Update: New York City's Salary Transparency in Job Postings – Failure to Comply with this New Law Carries Significant Penalties

Insights

April 29, 2022

April 29, 2022 Update: On Thursday, April 28, 2022 the New York City Council approved **legislation** that will push back the implementation of the salary transparency law by six months. The new law was supposed to go into effect May 15, 2022 and is now pushed back to November 1, 2022.

How do the new amendments change the salary transparency requirements?

1. The amendments push back the law's effective date to November 1, 2022, to give employers more time to prepare for the new disclosure obligations.
2. The amendments clarify that the new law applies to both hourly and salaried workers.
3. The amendments state that the salary disclosure requirement does not apply to positions that cannot or will not be performed, at least in part, in the city of New York. Employers should take note this means the law *does* apply to jobs that can be performed in New York City, even if they are performed remotely wherever the employee resides. For businesses with four or more employees and at least one that works in New York City, job postings for remote positions therefore need to disclose the salary range.

4. The amendments clarify that job applicants will not have the right to sue employers for violations of the law, but *current* employees can still do so.
5. The amendments state that first-time violations can be corrected within 30 days without a monetary penalty.

While employers now have more time to comply, there is still much to be done before November. Employers should continue to evaluate internal processes for determining salaries, develop a process for publishing salary ranges in internal and external job postings, and ensure personnel are ready to comply with the new law by November 1, 2022.

Starting May 15, 2022, employers advertising jobs in NYC must include a good faith salary range for every job, promotion, and transfer opportunity advertised.

Key Takeaways:

- Employers with four or more employees (including independent contractors) are subject to New York City's new salary transparency law if **one or more** of their employees works in New York City.
 - Covered employers who advertise for a job, promotion, or transfer opportunity that would be performed in New York City must include a good-faith estimate of the minimum and maximum salary for the position.
 - Salary refers *only* to the base wage or rate of pay and not other forms of compensation or benefits, such as health benefits, commissions, bonuses, or incentive equity.
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New York City will soon join a growing number of states and localities that have enacted pay transparency laws. Starting May 15, 2022, employers with four or more employees (which includes independent contractors), at least one of whom works in New York City, must include the minimum and maximum salary in every posting or advertisement for jobs that will be performed in New York City.

Who is covered? The New York City Commission on Human Rights (NYCCHR) has published a **fact sheet** providing guidance on this new law. In this fact sheet, the NYCCHR clarifies that the four employees do not need to work in the same location or all work in New York City. If one employee works in New York City, the workplace is deemed covered. Further, the new law applies to advertisements for positions that

can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee's home.

What constitutes an advertisement? Any advertisement for a job, promotion, or transfer opportunity performed in New York City is covered by the new law. NYCCHR has defined "advertisement" as a written description of an available job, promotion, or transfer opportunity publicized to a pool of potential applicants. The new law does not require employers to post an advertisement before hiring new employees or filling open positions.

How do employers come up with a good faith estimate of the salary range?

Employers must state both the minimum and maximum salary they in good faith believe at the time of the posting they will pay for the advertised job, promotion, or transfer opportunity. The range cannot be open ended (for example, "\$15 and up" or "maximum \$50,000 per year" would not be acceptable). Salary is defined to include the base wage or rate of pay, and not additional forms of compensation or benefits.

For example, salary would include an hourly wage of \$15 per hour or an annual salary of \$50,000 per year, but it would not include health insurance, commissions, bonuses, stock options, or other forms of compensation or benefits.

Are there penalties? The new law provides that a private right of action can be brought for compensatory and punitive damages, and attorney's fees and costs. Employers who violate the law may also have to pay civil penalties up to \$250,000. More information regarding the enforcement of this new law can be found [here](#).

A [bill](#) to amend the salary disclosure law was proposed to the New York City Council, which could result in further changes to this law. However, as of the date of this article's publication, the amendment has not been passed and the fate of the bill is not yet known.

Our Labor & Employment team is closely monitoring the status of this proposed amendment.

Action Steps:

- Ensure your people operations team and/or human resources department is aware of this new law and are preparing to comply by May 15, 2022.
- Develop a process for publishing salary ranges in your internal and external job postings.
- Evaluate your internal process for determining salaries and consider how disclosure of future salaries may affect employee morale.

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