

updated July 7, 2022

New York City and State Employers Must Disclose Salary Information in Job Postings

Nonprofits that operate in New York City will be required to include compensation information in their job postings under both City and, very likely, State law. On May 3, 2022 New York City Mayor Eric Adams signed into law Introduction Number 133-A, which is set to take effect on November 1, 2022.

The City law makes it an unlawful discriminatory practice for job listings in New York City to omit the minimum and maximum salary or wage. The legislation, introduced by the New York City Council Committee on Civil and Human Rights, was passed in part to increase wage transparency and promote wage equity for historically lower compensated groups. The City law applies to employers with four or more employees, which includes independent contractors who do not have their own employees.

Employers will need to include a minimum and maximum salary or range for all job listings including for new hires, promotions, or transfer opportunities, and for salaried, exempt and hourly non-exempt positions. Additionally, employers should make a “good faith” determination of the salary range at the time of posting. Only positions that cannot, or will not, at least in part, be performed in New York City are exempt from the law.

If an employer in the City fails to comply with the law, they may face fines of up to \$125,000 or other civil penalties. However, the law as amended allows employers to avoid a civil penalty if it provides the NYC Commission on Human Rights (“Commission”) with notice that the violation has been cured within 30 days after receiving a complaint from the Commission. The Commission is expected to update its recently issued guidance in light of the amended law.

The New York State legislature has passed a bill which would amend the New York State Labor Law (“NYLL”) by requiring that employers disclose compensation ranges for job openings including job promotion, and transfer advertisements. The statewide law will go into effect 270 days after being signed into law by Governor Hochul. To date, the Governor has not done so.

Under the new State law, if enacted, similar to the New York City law, employers with four or more employees will be required to provide a range of compensation for all job listings and advertisements for internal promotions or transfers.

The New York State law is different from the New York City law in regards to employment based on commissions, in that an employer that seeks an employee to be paid solely on a commission basis is required to contain a general statement that the compensation would be based on commissions in the description in the advertisement. Also, the penalties to an employer differ from the New York City law in

that a New York State employer may be subjected to civil penalties of \$1,000 for a first violation, \$2,000 for a second violation, or \$3,000 for a third or subsequent violations. Both laws apply to all positions that can or will, at least in part, be performed in New York City and State.

Other jurisdictions, including California, Colorado, and Maryland, have enacted other wage transparency laws that impose similar or related obligations on organizations operating in those states. Nonprofit organizations that operate in other states should ensure they are up-to-date on the latest rules and regulations of the jurisdiction.

There is some certainty that the New York City law will go into effect before the statewide bill will become law. Even if that is not the case, the statewide law specifically says that it does not preempt any local law. As organizations are ensuring that their practices align with the New York City law, they may want to be sure that it also aligns with the new statewide requirements as well.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at jmoldover@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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