

# NOW & NEXT

## Labor & Employment Alert

MARCH 28, 2022

### New York City issues guidance and may amend its new pay transparency law

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The NYCCHR has issued employer guidance; meanwhile, a bill to amend the new law and push back its effective date from May 15 to November 1, 2022, is pending.



#### What's the Impact?

- / The NYC Commission on Human Rights has issued a factsheet with employer guidance
- / New York City employers should continue to prepare for compliance with the salary transparency law under the current May 15, 2022, effective date
- / A bill to amend the new law is pending that would push its effective date back to November 1, 2022, and clarify compliance obligations

As part of a growing trend, the New York City Council passed a pay transparency law on December 15, 2021, which became law on January 15, 2022, after Mayor Eric Adams took no action on the bill. Currently effective May 15, 2022, the New York City Human Rights Law ("NYCHRL") is expanded to make it an unlawful discriminatory practice for an employer "to advertise a job, promotion[,] or transfer opportunity without stating the minimum and maximum salary for such position in such advertisement."

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The new law has left many open questions for New York City employers.

On March 22, 2022, the New York City Commission on Human Rights (“NYCCHR”) issued a [Factsheet](#) with some initial guidance for employers. As discussed below, some of this guidance extends beyond the language of the existing law.

In yet another recent development, on March 24, 2022, two New York City Council members introduced a bill that would amend the law to push back the new law’s effective date to November 1, 2022, and clarify some other compliance points for employers, as further discussed below.

In the meantime, New York City employers should continue to prepare for compliance with the salary transparency law under the current May 15, 2022, effective date, and to follow closely for further developments.

## Employer requirements for disclosing salary range in postings

Under the existing law, an employer must state the salary range “from the lowest to the highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion[,] or transfer opportunity.” The law does not define the terms “salary,” “advertise,” or “good faith,” and contains no distinction between internal and external postings.

However, the NYCCHR Factsheet provides guidance on its interpretation of these and other terms as follows:

- / An “advertisement” is “a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants . . . regardless of the medium in which [it is] disseminated” —including “postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements.”
- / “Good faith” means “the salary range the employer honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).”
- / “Employers must include both a minimum and a maximum salary; the range cannot be open ended.”
- / “Salary” means “base wage or rate of pay, regardless of the frequency of payment” and does not include other forms of compensation or benefits offered in connection with the advertised job, promotion, or transfer opportunity,” such as insurance, overtime pay, bonuses, or stock options, but the employer may choose to include that information.
- / “Any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City is covered by the new law” and “[c]overed employers should follow the new law when advertising 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.
- / “[P]ostings are covered regardless of whether [the employer is] seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of

worker protected by the NYCHRL.”

The NYCCHR guidance also states that the law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.

The pending bill to amend the law would address some open issues under the current law. If enacted, the amendment would specify that the law (1) applies to both hourly and salaried positions; (2) would not apply to advertisements for “[p]ositions that are not required to be performed, at least in part, in the city of New York”; and (3) would exempt from coverage general advertisements that simply state that an employer is hiring without reference to particular positions.

## Employers covered

Under the existing law, an employer is covered by the law if it has had four or more persons “in its employ” in the previous year. For purposes of determining coverage, employers must count full-time, part-time, permanent, and temporary employees, interns, and independent contractors. Notably, temporary staffing agencies are not subject to salary posting requirements when advertising temporary jobs.

If the pending bill is enacted, the law would be amended to apply only to employers with 15 or more employees.

## Penalty for violations

The existing law does not specify the penalty for violating the law’s salary posting requirements. The pay transparency law amends the NYCHRL, which imposes civil penalties for unlawful discriminatory practices. The NYCCHR is authorized under the law to implement the law and promulgate rules before it goes into effect.

In the NYCCHR’s Factsheet, the agency indicates that it will receive complaints and may initiate its own investigations based on testing, tips, and other sources of information. As for violations, the agency states that “[e]mployers and employment agencies found to have violated the NYCHRL may have to pay monetary damages to affected employees and civil penalties of up to \$250,000” and “[c]overed entities may also be required to amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.”

At this time, it is unclear whether and when the NYCCHR may promulgate rules in addition to the guidance set forth in the Factsheet.

## Employer action

All covered employers in New York City should take action to ensure compliance with the pay transparency law before it goes into effect on May 15, absent amendment of the effective date. Employers may want to consider internal salary policies and the interaction of other equal pay laws.

New York City is following the trend of other states such as, California, Colorado, Connecticut, and others with similar pay transparency laws. New York State has [recently introduced legislation](#) that may expand pay transparency coverage to the whole state, but no action has been taken. Employers with employees in multiple states and jurisdictions should look at other states with similar laws to see if any are also applicable.

Lastly, employers should take notice of any forthcoming rules or further guidance that may be released by the NYCCHR with additional information on application and enforcement.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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