

NEW YORK STATE'S PAY TRANSPARENCY LAWS

March 9, 2023

On December 21, 2022, Governor Kathy Hochul signed New York State's pay transparency bill and the new law goes into effect on September 17, 2023. In advance of the September 17 effective date, the state legislature passed and Governor Hochul signed an amendment, on March 3, 2023, to address many open questions.

COVERED EMPLOYERS

The state law applies to employers with four or more employees. Presently, it is unknown whether all four employees need to be employed within the state or whether an employer is covered if it employs at least one employee in the state but has at least four employees total regardless of location. (New York State's paid sick leave law counts employees nationwide so that in-state employees receive the maximum sick leave allowance for working for large multi-state employers who may have a small footprint in the state.)

COVERED ADVERTISEMENTS AND RECORDKEEPING REQUIREMENTS

Before the law was amended, it required the disclosure of salary ranges in written advertisements and postings for jobs, promotions or transfer opportunities that could be performed, at least in part, in New York State. The amended law now requires disclosure if the job, promotion or transfer opportunity will be physically performed outside of New York but reports to a supervisor, office, or other work site in New York. The amended law provides a definition for advertisements – making “available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity” – that aligns with New York City's pay transparency law. The minimum and maximum salary or hourly range of compensation must be based on the employer's good faith belief of what the employer would pay at the time of the posting of the advertisement. Unlike the NYC law (addressed below), if the position is solely compensated on commission, that must be included in the advertisement in order to comply with the state law.

Additionally, the amendment removes the requirement that employers maintain records of the history of salary or hourly ranges and job descriptions, to the extent they exist, for each position advertised. However, employers may want to maintain such record in case it needs to prove compliance with the state's pay transparency law.

FEES AND PENALTIES

Like many New York State employment laws, the law has an anti-retaliation provision barring employers from refusing to interview, hire, promote or employ a job applicant or current employee for exercising any rights provided by the law. Only the state's commissioner of labor is authorized to investigate and prosecute violations. Violators could be subject to civil penalties not to exceed \$1,000 for the first violation, \$2,000 for the second violation and \$3,000 for the third and all subsequent violations.

The Department of Labor is expected to promulgate regulations about the law so there will be more clarity regarding many unanswered questions.

MEET THE TEAM



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