

### **New York City Wage Transparency Law Guidance Issued**

On May 12, 2022, the New York City Commission on Human Rights (“NYCCHR”) [released a fact sheet](#) providing guidance on the amended NYC salary transparency law, which is currently set to take effect on November 1, 2022. As we wrote about [here](#), the amended salary transparency law requires NYC employers to include minimum and maximum salary information in job postings for any position (including independent contractor positions) located within New York City.

#### **Who is a Covered Employer?**

The guidance explains that the law applies to all employers with four or more employees or at least one domestic worker. The guidance clarifies that the four employees do not all need to work in the same location and do not all need to work in New York City, provided that at least one employee works in New York City. Employment agencies are also covered by the new law, regardless of their size. The amended law does not apply to temporary help firms.

#### **What Constitutes an Advertisement?**

Any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City is covered by the law. The guidance defines an “advertisement” as a “written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants,” regardless of how it is disseminated. The advertisement may be posted on an internal bulletin board, circulated on the internet, distributed as a printed flyer at a job fair, or printed in a newspaper. Importantly, the guidance confirms that the law does not prohibit employers from hiring without using an advertisement nor does it require employers to create an advertisement in order to hire an employee. Advertisements seeking full- or part-time employees, interns, domestic workers, or independent contractors must comply with the amended law.

#### **What is the Law’s Geographic Scope?**

According to the guidance, the amended law applies to employers 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.” This suggests that if the advertised job can be performed in New York City, regardless of where the applicant is located and where the job is ultimately performed, a covered employer must provide a salary range in the advertisement for the position. It remains to be seen whether including a statement in a posting that a remote job *may* not (as a matter of employer policy) be performed in New York City would be sufficient to avoid the salary disclosure requirement. When Colorado passed a similar [salary transparency law](#), state regulators there [rejected](#) a similar argument raised by employers, and we suspect that NYCCHR will do the same.

#### **What Information Must be Included in the Advertisement?**

The amended law requires covered employers to state the minimum and maximum salary range for the advertised position that the employer, “in good faith” believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity. The guidance defines “good faith” to mean the salary range that the employer “honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).” The advertisement must include both a minimum and maximum salary; open ended ranges such as

“maximum of \$50,000” or “\$15 per hour and up” are not acceptable. If there is no flexibility in the salary offered, the minimum and maximum salary may be identical. The guidance notes that advertisements that cover multiple jobs, promotions, or transfer opportunities can include salary ranges that are specific to each opportunity.

The guidance defines salary as the “base annual or hourly wage or rate of pay, regardless of the frequency of payment.” Salary does not include other forms of compensation or benefits including: (i) health, life, or other employer-provided insurance; (ii) paid or unpaid time off, including paid sick or vacation days, leaves of absence, or sabbaticals; (iii) the availability of or contributions towards retirement or savings funds, such as 401(k) plans or employer-funded pension plans; (iv) severance pay; (v) overtime pay; and (vi) other forms of compensation including commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging.

### **How Will the Law be Enforced?**

The guidance explains that the Commission on Human Rights will investigate complaints alleging violations of the amended law. The amended law provides that only current employees may bring an action against their employer for violation of the law. Applicants for a position, who are not also current employees, cannot bring an action against a prospective employer.

### **What are the Penalties for Noncompliance?**

Employers and employment agencies found to have violated the law may have to pay monetary damages to affected employees, amend advertisements, create or update policies, conduct training, and provide notices of rights to employees or applicants. The guidance explains that there will be no monetary penalty imposed for an employer, employee, or employment agency’s first violation of the law, provided that the employer, employee, or employment agency cures the violation within thirty (30) days and submits proof thereof to the NYCCHR. Covered employers may have to pay civil penalties of up to \$250,000 for an uncured first violation of the amended law, as well as for any subsequent violations.

### **Key Takeaways**

The guidance released by NYCCHR answers key questions regarding the amended salary transparency law. Employers should take steps over the next few months to prepare to comply with the law when it goes into effect on November 1, 2022.

We will continue to monitor developments related to this law and will provide subsequent updates once more information becomes available.

We also note that the New York State legislature recently passed its own salary transparency legislation. We will provide an update following Governor Hochul’s consideration of the proposed legislation. Employers in New York City will need to comply with both New York state and city law if the New York state legislation becomes law.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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