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Labor & Employment Alert

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New York State pay transparency bill

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Employers await Governor Hochul's signature on the New York State pay transparency law, as they prepare for New York City's law to take effect on November 1, 2022.



What's the Impact

- / The New York State pay transparency bill that passed the legislature in June 2022 has not yet been signed into law, but Governor Hochul is expected to either sign or amend the bill.
- / If signed, it will become effective 270 days later.
- / The New York State pay transparency law would apply to postings for jobs "that can or will be performed, at least in part" in New York State and will include requirements beyond the New York City law going into effect November 1.

New York State is expected to soon be the latest jurisdiction to continue the trend of enacting pay transparency laws. On June 2, 2022, the New York State legislature passed the pay transparency bill. The bill is awaiting the signature of Governor Kathy Hochul. The law will become effective 270 days after Governor Hochul's signature.

Business groups have reportedly asked Gov. Hochul to amend the bill to preempt all local pay transparency ordinances, except for New York City. It remains to be seen whether she will sign or amend the bill, but she is not expected to veto the law. If enacted, the New York State Commissioner of Labor will be authorized to promulgate rules and regulations to effectuate the law.

The New York State pay transparency law is not the first of its kind in the state. Earlier this year, the New York City Council amended the New York City Human Rights Law to require pay disclosure in job advertisements. The City of Ithaca quickly followed by passing its own amendment to a city ordinance. As we previously reported, the [NYC pay transparency law](#) will go into effect on November 1, 2022.

If the law is enacted, New York state will join California, Colorado, and Washington state as states requiring disclosure of salary information in job postings.

Coverage and requirements

Under the version of the bill pending signature, New York State's law would apply to any employer with four or more employees, meaning almost all employers with employees in the state will need to take action to comply. Similar to the NYC pay transparency law, temporary help firms would also be excluded.

To comply, employers will need to post the following information in advertisements for any job, promotion, or transfer opportunity for all positions "that can or will be performed, at least in part" in New York State:

- / The compensation or a range of compensation for such job, promotion, or transfer opportunity
- / The job description for such job, promotion, or transfer opportunity if such description exists
- / A general description of other forms of compensation to be offered if applicable, including, but not limited to, fringe benefits, bonuses, stock options, or commission.

The latter two requirements would go beyond the New York City's pay transparency law going into effect on November 1.

"Range of compensation" is defined in the bill as the minimum and maximum annual salary or hourly range of compensation for the position that the employer, in good faith believes to be accurate at the time of posting the advertisement.

Employers will need to determine whether a position posted is one "that can or will be performed, at least in part" in New York State. It is currently unclear how broadly this provision will be interpreted with respect to remote workers. Employers would benefit from further clarification on this point through either amendment of the bill prior to signature or the New York Commissioner of Labor's promulgated regulations.

Employers must also maintain necessary records to comply with the requirements of the law, including the history of compensation ranges for each position advertised and job descriptions for the positions to the extent they exist.

Violations

Violation of any section of the statute could result in a civil penalty of up to \$3,000. Aggrieved parties will be able to file a complaint with the New York Commissioner of Labor, which may trigger an investigation. There is no private right of action against employers. Employers are prohibited from retaliating against an individual for filing a complaint. Prohibited retaliation includes, but is not limited to, refusal to interview, hire, promote, or employ.

Employer action

All employers that anticipate posting or advertising for positions based in New York State or that may involve duties performed in part in New York State should take notice of any further action from Governor Hochul. Employers may consider reviewing internal salary policies and posting practices for new hires, promotions, and transfers. It is also advisable for employers to consider updating job descriptions for postings to ensure they are accurate and comply with the provisions of the law. Ensuring compliance with the law's record-keeping policies is also recommended.

Lastly, employers with employees in multiple states and jurisdictions should continue to monitor for any future changes in pay transparency laws.

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

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