



May 2, 2022

NYC Salary Transparency Law

On January 15, 2022, a new NYC law was enacted prohibiting employers from posting job listings without minimum and maximum salary information, and the New York City Commission on Human Rights subsequently issued a “fact sheet” providing guidance on the law. On April 28, 2022, the NYC Council passed another bill that amends the new law and delays its effective date from May 15, 2022, to November 1, 2022. Below is a summary of the amended law and guidance, with changes from the recent amendment in italics.

Who is a covered employer?	Any employer that has four or more employees (or one or more domestic employees).
How do employers determine if they have four or more employees?	Independent contractors and owners are counted as employees. The four employees do not need to work in the same location. Only one of the employees needs to work in NYC.
Are employment agencies covered?	Yes, they are covered regardless of size. This means that employment agencies must ensure that any job listing that they promote or seek to fill complies with the new salary transparency requirements. Temporary help firms seeking applicants to join their pool of available workers are not covered. However, employers who work with temporary help firms must follow the new salary transparency requirements.
Which job listings are covered by the new law?	Any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City is covered by the new law. Covered listings include postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements. Postings are covered regardless of whether they are seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHR. <i>Under the amended law, job postings for positions that cannot or will not be performed, at least in part, in NYC are excluded from the law’s scope. Commentators interpret this change as including in the law’s scope most remote jobs, which is consistent with the Commission’s fact sheet.</i>
What about word-of-mouth advertising?	The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.



NYC Salary Transparency Law

May 2, 2022

Page 2

What salary information is required in job listings?	<p>Employers must state the minimum and maximum salary they in good faith believe at the time of the posting they are willing to pay. Employers must include both a minimum and a maximum salary; the range cannot be open ended. If an employer has no flexibility in the salary they are offering, the minimum and maximum salary may be identical.</p> <p><i>Under the amended law, job postings for hourly positions are included in the law's scope, and a posting must state the minimum and maximum hourly wage for a position the employer in good faith believes at the time of the posting it would pay.</i></p> <p>Advertisements that cover multiple jobs, promotions, or transfer opportunities can include salary ranges that are specific to each opportunity.</p>
What does "good faith" mean?	"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).
What should be included as "salary"?	According to the guidance, salary includes the base wage or rate of pay, i.e., hourly rate or annual salary.
Must the employer include other forms of compensation in salary?	<p>No. For this purpose, salary does not include other forms of compensation or benefits offered in connection with the advertised job, promotion, or transfer opportunity.</p> <p>In calculating the salary minimum and maximum, employers need not include employer-provided insurance, paid time off, retirement plan contributions, severance pay, overtime pay, bonuses, stock, commissions, tips, meals, lodging or other forms of compensation.</p> <p>However, employers are still permitted to include additional information about benefits and other forms of compensation in the job posting.</p>
When must employers start complying?	<i>Under the amended law, the effective date as extended from May 15, 2022, to November 1, 2022.</i>
How will the new law be enforced?	The NYC Commission on Human Rights investigates complaints of discrimination. The Law Enforcement Bureau also initiates its own investigations.



NYC Salary Transparency Law

May 2, 2022

Page 3

	<i>The amended law limits private lawsuits related to an alleged violation of this NYC Salary Transparency Law to current employees.</i>
What are the penalties under the new law?	<p>Employers and employment agencies who are found to have violated the new law may have to pay monetary damages to affected employees and civil penalties of up to \$250,000.</p> <p><i>The amended law would exempt employers from being charged a monetary fine for the first violation if the violation is cured within 30 days.</i></p> <p><i>If the Commission accepts the proof of cure, the proof “shall be deemed an admission of liability for all purposes.” The law has not defined the meaning of “all purposes.”</i></p>

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm’s attorneys:

Deborah Buyer, 212-225-8483 x1, deborah@deborahbuyerlaw.com

Lydia Fan Wong, 212-225-8483 x2, lydia@deborahbuyerlaw.com

© Deborah Buyer Law PLLC 2022

These materials do not constitute legal advice or create an attorney-client relationship. The reader is advised to consult with an attorney to obtain legal advice.

U.S. Treasury Circular 230 Notice: U.S. Treasury Regulations require us to inform you that any U.S. tax advice in this communication cannot be used by you to avoid tax penalties or to promote, market or recommend to another party any transaction or matter addressed herein.