

Pay Transparency in New York

Legal Requirements and Related Concerns

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Pay Disclosure

Pros

- ▶ Appeal to applicants?
- ▶ Streamline hiring process?
- ▶ Reduce discrimination?
- ▶ Demonstrate fairness?

Cons

- ▶ Privacy concerns?
- ▶ Risk gripes from current employees?
- ▶ Raise overall labor costs?
- ▶ May be harder to set compensation properly?
- ▶ Reveal valuable business information to competitors?

States with Pay Disclosure Laws

- ▶ California
- ▶ Colorado
- ▶ Connecticut
- ▶ Maryland
- ▶ Nevada
- ▶ Rhode Island
- ▶ Washington



Salary History Ban

- ▶ New York State law took effect Jan. 6, 2020
- ▶ Prohibits employers from inquiring about applicants' wage or salary history
- ▶ Prohibits employers from using such information in hiring and determining wages
- ▶ Protections apply to current employees too

Compensation Disclosure Rights

- ▶ Section 7 of the NLRA has long permitted covered employees to discuss their compensation for their “mutual aid or protection”
- ▶ New York State Equal Pay Law says employers cannot prohibit employees from “inquiring about, discussing, or disclosing the wages of such employee or another employee”

New York City Pay Transparency in Job Advertisements Law

- ▶ Enacted Jan. 15, 2022; amended May 12, 2022
- ▶ Takes effect Nov. 1, 2022
- ▶ Applies to employers with 4 or more employees, even if only 1 works in NYC



Covered Postings

- ▶ Applies to jobs (including promotions and transfers) that could be performed in NYC
- ▶ Doesn't require that job be advertised
- ▶ Exception for temporary help firms seeking workers to join their pool of temporary workers



Advertisement

- ▶ Written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants
- ▶ Includes postings on internal bulletin boards, internet advertisements, printed flyers, and newspaper ads



Required Information

- ▶ Must state minimum and maximum salary or hourly wage for the position
- ▶ Range may extend from lowest to highest salary/wage the employer in good faith believes at the time of the posting it would pay for the job
- ▶ Not required to post overtime rates or other forms of compensation or benefits

Enforcement

- ▶ Only current employees can bring civil lawsuit against their employer alleging violation
- ▶ Applicants or employees may file complaints with the NYC Commission on Human Rights
- ▶ Civil penalty for first offense is \$0 if employer cures violation within 30 days
- ▶ Up to \$250,000 for uncured or subsequent violations

New York State Proposed Bill

- ▶ S.5598D/A.6529
- ▶ Broader than NYC law, but might only apply to non-governmental employers
- ▶ For all jobs (including promotions and transfers) “that can or will be performed, at least in part, in the State of New York”

NYS Bill – Disclosure Components

If a job is advertised, employer must disclose

1. Compensation or range of compensation
2. Job description, if one exists
3. Description of fringe benefits, bonuses, stock options, commissions, etc., if applicable

Complicating Factors

- ▶ Remote positions
- ▶ Comparable positions in different locations
- ▶ Impact on compensation of incumbents
- ▶ Union organizing



Compliance Considerations

- ▶ Audit current compensation
- ▶ Determine process for objectively setting “good faith” compensation ranges
- ▶ Review job postings as compensation rates change
- ▶ Evaluate alternatives to advertising openings in compensation sensitive positions

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Questions?



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