CLIENT ALERTS & INSIGHTS

New York City Pay Transparency Law Now In Effect

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As of November 1, 2022, New York City employers now have to comply with a new law requiring employers to include minimum and maximum salary information for jobs based in New York City. The new law, New York City Local Law 59, is aimed at improving pay transparency and fighting a wage gap that disproportionately affects women and workers of color.

The New York City law specifically prohibits employers from advertising a job, promotion or transfer opportunity based, at least in part, in New York City without stating the minimum and maximum annual salary or hourly wage for the position in the advertisement. The stated pay range may extend from the lowest to the highest annual salary or hourly wage that the employer in good faith believes, at the time of the posting, it would pay for the advertised job, promotion or transfer opportunity. According to a fact sheet issued by the New York City Commission on Human Rights, an open-ended salary range (e.g., "$20 per hour and up" or "maximum $50,000 per year") is not compliant with the new law. If an employer has no flexibility in the salary they are offering, the minimum and maximum salary may be identical (e.g., "$20 per hour"). In addition, advertisements that cover multiple jobs, promotions, or transfer opportunities can include salary ranges that are specific to each opportunity.

The law applies to New York City employers with four or more employees or with one domestic worker. The four employees do not need to work in the same location, and they do not need to all work in New York City. ***As long as one of the employees works in New York City (even part-time or remotely from the employee's home), the workplace is covered by the new law***. Notably, counted in the four-employee threshold are (1) owners and individual employers, (2) independent contractors, and (3) the employer's parent, spouse, domestic partner, or child, if employed by the employer. Employment agencies are also covered by the new law, regardless of their size. However, the law does not cover temporary help service firms recruiting workers for their labor pool.

The listings covered by the law include postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements. The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.

For the avoidance of doubt, the employer need not include other forms of compensation or benefits-such as health insurance, paid time off, overtime pay, bonus opportunity, or the availability of a 401(k) plan-in the job posting.

In terms of enforcement, the New York City Commission on Human Rights (NYCCHR) will not assess a civil penalty for a first complaint alleging a violation of the salary transparency provision, provided that the employer shows they have fixed the violation within 30 days of receiving the

NYCCHR's notice of the violation. However, covered employers may have to pay civil penalties of up to $250,000 for an uncured first violation of the new law, as well as for any subsequent violations.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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