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Recent Guidance and Amendment Shed Light on NYC Salary Disclosure Law

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On January 15, 2022, New York City enacted [2022 N.Y.C. Local Law No. 32](#), often referred to as the salary disclosure or “pay transparency” law. This new law amends the New York City Human Rights Law (NYCHRL) to require that employers include in job listings the “minimum and maximum salary” for the position.

Under this new law, New York City joins a number of jurisdictions that have enacted ([California](#), [Colorado](#), [Connecticut](#), [Maryland](#), [Nevada](#), [Cincinnati \(Ohio\)](#), [Toledo \(Ohio\)](#), [Rhode Island](#), and [Washington](#)) or proposed ([Massachusetts](#), [Pennsylvania](#), and [South Carolina](#)) pay disclosure laws. Accordingly, New York City builds upon its prior equal pay initiatives, such as the City’s 2017 law restricting salary history inquiries of job applicants. Although other jurisdictions with pay disclosure laws generally limit the required disclosures to informing actual applicants for job openings of minimum and maximum salaries, New York City adopted a broader rule and joins Colorado in requiring pay disclosures in public job postings.

New York City employers with questions about their obligations under Local Law 32 had many of those questions answered recently via an amendment to the law that Mayor Adams signed on May 12, 2022, as well as guidance that the New York City Commission on Human Rights (NYCCHR) issued that same day (updating guidance originally issued on March 22, 2022). Among other changes, the amendment pushes back the effective date of the law from May 15, 2022 to November 1, 2022, giving New York City employers a few more months to prepare for the new requirements and the impact that salary disclosures may have on an organization and its workforce.

In this article, we review Local Law 32, examine the recent amendment and NYCCHR guidance regarding the law, and discuss various considerations for employers preparing to comply with New York City’s new salary disclosure requirements.

NYC's Salary Disclosure Law

Local Law 32 makes it an “unlawful discriminatory practice for an employment agency, employer, employee or agent thereof to advertise a job, promotion or transfer opportunity without stating the minimum and maximum salary for such position in such advertisement.” The law covers any business with four or more employees (or independent contractors), and excludes job listings “for temporary employment at a temporary help firm” (*i.e.*, staffing agencies). While employers are not necessarily required to stay within the bounds of the salary range listed in their job postings, an employer must list the salary range that it “in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.”

In the wake of its enactment, Local Law 32 received some backlash from the New York City business community. On April 4, 2022, the Partnership for New York City (a business advocacy group), together with the five boroughs’ chambers of commerce, published an [open letter](#) to the New York City Council, criticizing Local Law 32 as having been enacted “in the middle of a local labor shortage,” “without any meaningful public input or consultation with employers,” and with most of the 200,000 businesses and 30,000 nonprofit organizations that would be impacted by the law (which was then set to go into effect by mid-May) having “no knowledge of the legislation.”

In an effort to address some of these concerns and clarify certain ambiguities in Local Law 32, the Council voted in favor of [2022 N.Y.C. Local Law No. 59](#) (enacted on May 12, 2022), which amended the City’s salary disclosure law as follows:

- Clarifying that the pay information that must be included in job listings includes annual salary “or hourly wage”;
- Excluding from the law’s coverage “[p]ositions that cannot or will not be performed, at least in part, in the city of New York”;
- Limiting the private right of action under the law to current employees of an employer (*i.e.*, excluding job applicants);
- Creating a “safe harbor” provision, allowing employers 30 days after receipt of a NYCCHR complaint to cure non-compliance of a first-time violation of the law without facing a civil penalty; and
- Extending the effective date of the law to November 1, 2022.

NYCCHR Guidance

Upon the amendment’s enactment, the NYCCHR issued updated guidance on the new law. Titled [“Salary Transparency in Job Advertisements,”](#) the NYCCHR’s guidance (originally issued on March 22, 2022, and updated on May 12, 2022) clarifies employers’ pay disclosure obligations in several notable ways.

Regarding which employers are covered by the new law, the guidance explains:

- An employer with four or more employees (including owners) is covered by the new law “[a]s long as [at least] *one* of its employees works in New York City” (emphasis added);
- Employers with one or more domestic workers (even if they have fewer than four employees in total) are covered by the NYCHRL, including its new pay disclosure requirements;
- Employment agencies (defined as “any person undertaking to procure employees or opportunities to work,” N.Y.C. Admin. Code § 8-102) are covered by the law “regardless of their size,” and thus “must ensure that any job listings they promote or seek to fill comply with the new salary transparency requirements”; and
- The “temporary help firm exception” means that “businesses that recruit, hire, and assign their own employees to perform work or services for other organizations, to support or supplement the other organization’s workforce, or to provide assistance in special work situations” are not covered by the salary disclosure law when “seeking applicants to join their pool of available workers.”

Regarding when and how covered employers must comply with the salary disclosure requirements, the guidance explains:

- A job posting must comply with the new law if the job “can or will be performed, in whole, or part, in New York City, whether from an office, in the field, or remotely from the employee’s home”;
- The pay range listed in a job posting “must include both a minimum and maximum salary” or hourly rate – *i.e.*, it cannot be open ended, such as “\$15 per hour and up” – but the posting need not include other forms of compensation or benefits such as bonuses, commissions, stock, paid time off, retirement plan contributions, etc.;
- Job postings are covered under the new law “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 NYCHRL” (though the guidance does not address how pay disclosure requirements work for independent contractors, who, for example, might be paid on a fixed fee basis for a project, rather than on an annual salary or hourly basis); and
- Employers can choose to hire without using an advertisement for the job opening, but any use of a job advertisement – defined as “a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants” through any medium, including “postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements” – must comply with the new law.

And regarding enforcement of the new pay disclosure law:

- The NYCCHR will accept and investigate complaints filed by members of the public, and will initiate its own investigations;
- For first violations that remain uncured following the safe harbor period and for any subsequent violations of the new law, covered employers may be subject to civil penalties of up to \$250,000,

and/or non-monetary relief such as having to amend advertisements, update policies, conduct training, or provide notices of rights to employees or applicants; and

- Employees affected by violations of the new law have a private right of action by which they can file suit against their current employer directly in civil court and recover monetary damages or other relief.

Practical Considerations

In advance of New York City’s pay disclosure requirements taking effect on November 1, 2022, covered employers should consider the impact that these disclosures may have on their businesses. For example, employees who learn about the pay ranges for other jobs at their current employer could feel frustrated if they believe their own pay should be comparatively higher, potentially leading to employee morale and retention issues, or possibly even actual or threatened claims of pay discrimination (whether or not there is a factual basis for such claims). Similarly, seeing salaries at competing businesses could cause employees who feel underpaid at their current jobs to ask for pay raises and/or leave for better-paying opportunities. Businesses might seek to poach employees from competitors by touting their comparatively higher pay as reflected in public job postings.

In view of the pay disclosure requirements and their potential impact, employers may seek to avoid use of job postings when possible, such as by exclusively using private recruiters or referrals. When employers do choose to advertise for a job opening, they will need to carefully consider what pay range to list for the role, keeping in mind the potential consequences noted above in conjunction with the requirement that the employer list the range that it “in good faith believes” it will pay for the job. Employers posting for remote jobs, or for hybrid jobs in the vicinity of New York City, will need to determine whether the job is one that “cannot or will not be performed, at least in part, in the city of New York” such that it would be excluded from the City’s pay disclosure requirements.

In preparation for this new law taking effect in November, employers may wish to consider reviewing their pay structures in an effort to identify any potential issues that could arise once salary ranges for job openings become publicly available.

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