

### **New York City Salary Law Guidance and Proposed Amendment**

On March 22, 2022, the New York City Commission on Human Rights (“NYCCHR”) released a fact sheet providing guidance on the NYC salary transparency law, which is currently set to take effect on May 15, 2022. As we wrote about [here](#), the salary transparency law requires NYC employers to include minimum and maximum salary information in job postings for any positions located within New York City.

#### **Who is a Covered Employer?**

The guidance explains that the law applies to all employers with four or more employees or at least one domestic worker. The guidance clarifies that the four employees do not all need to work in the same location and do not all need to work in New York City, provided that at least one employee works in New York City. Employment agencies are also covered by the new law, regardless of their size.

#### **What Constitutes an Advertisement?**

Any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City is covered by the law. The guidance defines “advertisement” as a “written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants,” regardless of how it is disseminated. The advertisement may be posted on an internal bulletin board, circulated on the internet, distributed as a printed flyer at a job fair, or printed in a newspaper. Importantly, the guidance confirms that the law does not prohibit employers from hiring without using an advertisement nor does it require employers to create an advertisement in order to hire.

#### **What Information Must be Included in the Advertisement?**

The law requires covered employers to state the minimum and maximum salary range for the advertised position that the employer, “in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.” The guidance defines “good faith” to mean the salary range that the employer “honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).” The advertisement must include both a minimum and maximum salary; open ended ranges such as “maximum of \$50,000” or “\$15 per hour and up” are not acceptable. If there is no flexibility in the salary offered, the minimum and maximum salary may be identical.

The guidance defines salary as the base wage or rate of pay, regardless of the frequency of payment. Salary does not include other forms of compensation or benefits including: (i) health, life, or other employer-provided insurance; (ii) paid or unpaid time off, including paid sick or vacation days, leaves of absence, or sabbaticals; (iii) the availability of or contributions towards retirement or savings funds, such as 401(k) plans or employer-funded pension plans; (iv) severance pay; (v) overtime pay; and (vi) other forms of compensation including commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging.

According to the guidance, the law applies to employers advertising for positions that can or will be performed, in whole or in part, in New York City, whether that be from an office, in the field, or remotely from an employee’s home.

This suggests that if the advertised job *can* be performed in New York City, regardless of where the applicant is located and where the job is ultimately performed, a covered employer must provide a salary range in the advertisement for the position.

### **Penalties for Noncompliance**

Employers and employment agencies found to have violated the law may have to pay monetary damages to affected employees and civil penalties of up to \$250,000. Covered entities may also be required to amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

### **Proposed Amendment to NYC Salary Transparency Law**

On March 24, 2022, the NYC Council introduced a bill to amend the salary transparency law. A hearing on the bill before the Committee on Civil and Human Rights is scheduled for April 5, 2022. A vote on the amendment will be taken at some point thereafter.

The amendment substantially narrows the scope of the salary transparency law. Specifically, the amendment revises the law to exclude employers with fewer than 15 employees. In addition, the amended law specifies that it would not apply to general notices that an employer is hiring without reference to any particular position or to positions that are not **required** to be performed, at least in part, in New York City (**suggesting that positions that are advertised as fully remote and able to be performed anywhere would not be subject to the law, if amended**). The amendment also clarifies that the law applies to employees who are paid hourly or through a salary. Finally, the amendment extends the effective date to November 1, 2022.

### **Discrepancies Between NYCCHR Guidance and Proposed Amendment**

The guidance is generally consistent with the proposed amendment with some important differences. First, the amended bill postpones the effective date to November 1, 2022. Second, the amended bill revises the law to exclude employers with fewer than 15 employees. Third, the amended bill would not apply to advertisements for positions that are not **required** to be performed in New York City. Finally, the amended bill specifies that it would not apply to general notices that an employer is hiring without reference to any particular position.

### **Key Takeaways**

The guidance released by NYCCHR answers key questions regarding the salary transparency law, including what constitutes a “good faith basis” for an employer’s stated salary range and whether the minimum and maximum salary range estimates include other forms of compensation such as commissions, tips, and bonuses. Open questions still remain regarding the exact requirements for postings for internal transfers and promotions.

The proposed amendment creates uncertainty as to the law’s scope and effective date. The amended bill would exclude employers with fewer than fifteen employees and would only apply to advertisements for jobs that are required to be performed in New York City. The amendment would also extend the effective date to November 1, 2022. We encourage all employers to take steps in the coming weeks to comply with the current version of the law in the event that the proposed amendment is not enacted and the law goes into effect on May 15, 2022.

We will continue to monitor developments related to this law and the bill to amend it, and will provide subsequent updates once more information becomes available.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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