

ALERTS

Guidance Issued on NYC Salary Disclosure Law

April 6, 2022

The New York City Commission on Human Rights (“NYCCHR”) recently released a fact sheet regarding New York City’s upcoming salary disclosure law, previously discussed here. The new law amends the New York City Human Rights Law (“NYCHRL”) to make it an unlawful discriminatory practice for covered employers to advertise a job posting for any position located within New York City without including a “good faith” minimum and maximum salary for the job. The law goes into effect on May 15, 2022.[1] The fact sheet provides additional guidance, discussed below, on the new law.

Covered Employers

The law applies to employers that have four or more employees, or one or more domestic workers, as long as one of those employees works in New York City. Employment agencies are also covered, regardless of their size. Although temporary help firms are not independently subject to the new law, employers that work with such firms are required to comply.

Covered Job Advertisements

Any advertisement for a job, promotion or transfer opportunity that would be performed in New York City is covered by the law. Advertisement is defined as “a written description of an available position that is publicized to a pool of potential applicants.” This includes postings on internal bulletin boards, internet advertisements, printed flyers, and newspaper

advertisements. Employers are not prohibited from hiring without the use of an advertisement.

According to the fact sheet, “covered employers should follow the new law when advertising for positions that can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee’s home.” If the job must be performed outside of New York City, it would not be covered by the new law, even if advertised by a New York City employer. The fact sheet indicates that the NYOCHR will take the position that covered employers must comply with the new law, even if located outside of New York City, when advertising for positions allowing any remote work as the job *could* be performed in New York City if an applicant lives and would work remotely in New York City. The relevant question for determining whether a job advertisement is covered is where the employee can perform the work, not where the employee lives. Advertisements 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 NYCHRL.

Necessary Information to Include in Covered Job Advertisements

Employers must state the minimum and maximum salary they in “good faith” believe they are willing to pay. To be in “good faith,” the posted salary range should be the amount the employer honestly believes it is willing to pay at the time of listing the job advertisement.

Salary includes the base wage or rate of pay, regardless of the frequency of payment. For example, it would include an hourly wage of \$15 per hour or an annual salary of \$50,000 per year. The salary range cannot be open ended. For example, “\$15 per hour and up” or “maximum \$50,000 per year” does not comply. An employer, however, may post an exact wage or salary in lieu of a range. When an advertisement covers multiple positions, each position must include a specific salary range.

For purposes of this law, salary does not include other forms of compensation or benefits offered in connection with the advertised position, such as health insurance, paid or unpaid time off, retirement plan offerings, severance pay, overtime pay, commissions, tips, bonuses, stocks or the value of employer-provided meals or lodging.

Enforcement

Employers that are found to have violated the NYCHRL may have to pay monetary damages to affected employees and civil penalties of up to \$250,000. Employers may also be required to amend postings, update policies, conduct trainings, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

In anticipation of the salary disclosure law's implementation date, covered employers should review their job advertisements to ensure compliance.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] A bill was recently introduced in the New York City Council that would, if enacted, move the effective date of the salary disclosure law to Nov. 1, 2022. The bill also would: (i) exclude employers with fewer than 15 employees, (ii) clarify that the law does not apply to notices that an employer is hiring without specifying a particular position and (iii) confirm the law does not apply to positions that are not required to be performed in New York City.

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