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## NYC Issues Guidance Related to Salary Transparency in Job Advertisements

By Carolyn D. Richmond, Glenn S. Grindlinger and Timothy A. Gumaer

The New York City Commission on Human Rights (NYCCHR) has issued [guidance](#) to assist New York City employers in complying with a new requirement that, effective May 15, 2022, they must include a good faith salary or wage range when advertising a specific job, promotion or transfer opportunity.

### Background

As explained in our previous December 15, 2021 [alert](#), the New York City Council passed an [amendment to the New York City Human Rights Law](#) (NYCHRL) making it an unlawful discriminatory practice for an employer, employment agency, employee or agent thereof to advertise a job without stating the position's minimum and maximum salary or rate of pay. Notably, this applies not only to public advertisements, but also to *internally* advertised job, promotion and transfer opportunities.

Although the new law's language is short on detail, the NYCCHR published guidance on March 22, 2022 to assist employers in complying with the new requirements before they take effect on May 15, 2022.

### To Whom Does This New Law Apply?

These requirements will apply to employers with four or more employees that have at least one employee working in New York City. Additionally, all employment agencies are covered by the new law, regardless of their size.

The new law does *not* apply to "temporary help firms" seeking applicants to join their pool of available workers. The NYCCHR defines "temporary help firms" as 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." However, employers that work with temporary help firms *are* required to follow the new salary transparency requirements.

### What Job Listings Are Covered by the New Law?

The law applies to any advertisements for a job, promotion or transfer opportunity that can or will be performed, in whole or in part, in New York City, regardless of whether that work is performed from an office, in the field or remotely from the employee's home. Moreover, the law applies to all advertisements regardless of whether the advertisement is seeking full- or part-time employees, interns, domestic workers or independent contractors. The law also covers advertisements for both hourly and salary positions, regardless of the frequency of payment.

The NYCCHR defines an "advertisement" as a written description of an available job, promotion or transfer opportunity that is publicized to a pool of potential applicants, such as on an internal bulletin board or through

other postings, internet advertisements, printed flyers distributed at job fairs and newspaper advertisements.

### **What Information Must be Included in Job Advertisements?**

A covered employer must include a “good faith” minimum and maximum salary or rate of pay that it is willing to pay for the advertised job, promotion or transfer opportunity. The NYCCHR warns, however, that the minimum and maximum salary or rate of pay *cannot* be open-ended. In other words, employers cannot advertise that a position will pay “\$15 per hour and up” or a position that has a “maximum \$50,000 per year” salary.

If an employer has no flexibility in the salary they are offering, the minimum and maximum salary may be identical. For example, an advertisement may simply state that the position pays “\$20 per hour.”

Although they are welcome to do so, the new law does *not* require covered employers to publish other forms of compensation or benefits offered in connection with the advertised job, promotion or transfer opportunity, such as:

- Health, life or other employer-provided insurance
- Paid or unpaid time off work, such as paid sick or vacation days, leaves of absence or sabbaticals
- The availability of or contribution towards retirement or savings funds, such as 401(k) plans or employer-funded pension plans
- Severance pay
- Overtime pay
- Other forms of compensation, such as commissions, tips, bonuses, stock or the value of employer-provided meals or lodging

### **Are Covered Employers Required to Publish Advertisements for an Opportunity?**

No. The NYCCHR makes clear that the new law does *not* require an employer to create an advertisement for a job, promotion or transfer opportunity. Nor does the new law prohibit an employer from employing an individual without using an advertisement.

### **How Will Salary Transparency Protections be Enforced?**

Employers who are found to have violated the NYCHRL (including these new requirements) may be required to pay monetary damages to affected employees and civil penalties of up to \$250,000. Persons aggrieved by alleged discrimination in violation of the NYCHRL also may generally bring a private cause of action in court to seek recovery of damages (including punitive damages) and injunctive relief.

### **Future Amendments on the Way?**

While the salary transparency law is set to take effect on May 15, 2022, the New York City Council introduced another [bill](#) on March 24, 2022 that would move the effective date of the law to November 1, 2022 and would exclude employers with fewer than 15 employees from having to disclose a minimum and maximum salary or rate of pay.

The proposed amendments would also clarify that:

- The law applies to advertisements for both hourly and salary positions.
- An employer does not need to disclose a salary or rate of pay range in a general advertisement that the employer is hiring, without reference to any particular position.
- An employer does not need to disclose a salary or rate of pay range for positions that are not required to be performed, at least in part, in New York City.

Employers are urged to monitor the status of the March 24 bill to determine whether they will ultimately be covered by the salary transparency law and, if so, when they will be obligated to comply with the law as it relates to advertisements for job, promotion or transfer opportunities.

*For more information about this alert, please contact Carolyn D. Richmond at [crichmond@foxrothschild.com](mailto:crichmond@foxrothschild.com), Glenn S. Grindlinger at [ggrindlinger@foxrothschild.com](mailto:ggrindlinger@foxrothschild.com), Timothy A. Gumaer at [tgumaer@foxrothschild.com](mailto:tgumaer@foxrothschild.com), or any member of Fox Rothschild's New York Labor and Employment Group.*