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As we previously reported, New York City is following a growing legislative trend towards pay transparency by requiring employers to disclose salary ranges in connection with advertised open positions. Recent amendments passed by the New York City Council have postponed the effective date of the pay transparency law from May 15, 2022 to November 1, 2022. While the deferral provides covered employers with leeway to comply, they should take note of recent developments and be on the lookout for further amendments and guidance.

Even if your company doesn’t have physical operations in New York, you shouldn’t click past this article: Employers nationwide should consider whether job postings for remote positions must comply with this local law.
Brief Summary of the Law

New York City’s pay transparency law amended the New York City Human Rights Law (NYCHRL) to make it unlawful for a New York City employer to advertise a job, promotion, or transfer without including the minimum and maximum salary for the position. Covered employers include those with at least four employees or independent contractors if at least one works in New York City.

Recent Amendments and Guidance

In addition to deferring the law’s effective date, the amendments provide that only current employees, not applicants, may bring an action against an employer for an alleged violation. Further, covered employers are subject to no monetary penalty for a first violation if the violation is cured within 30 days. Finally, the amendments clarified that a covered job advertisement must include minimum and maximum annual salary or hourly wage information.

Earlier guidance released by the City provided additional clarity about the scope of the law’s requirements. The guidance provides that non-salary compensation and benefits, such as paid time off, overtime pay, and bonuses, may be omitted from postings. In addition, the law applies to internal job postings as well as opportunities for promotion or transfer. The New York City Commission on Human Rights may investigate complaints of violations, and employers found to have violated the law may be liable for monetary damages to affected employees and civil penalties of up to $250,000.

Implications Beyond The Five Boroughs

All employers—not only those in New York—that advertise remote positions should consider whether these job postings must comply with New York City’s pay transparency law. The City’s guidance provides that “[c]overed 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.”

As the law is written, a non-New York employer must include a salary range in an advertisement for a remote position, provided that the position could be filled by someone working from New York City. By contrast, a job advertisement need not include a salary range if the position will be performed outside of New York City, even if the employer is New York-based.

New York City would not be the first jurisdiction to regulate remote job postings. Recall Colorado’s pay equity statute, which requires employers to post the compensation range and a general description of all employment benefits in postings for jobs that could be performed in Colorado. As a response to the law, many employers excluded Colorado applicants from their remote job openings, which in some instances garnered unwanted media attention.

Colorado has since taken the position that as long as a remote position could theoretically be performed in Colorado, the employer must post compensation and
benefits information, notwithstanding an employer’s disclaimer that the job cannot be performed in Colorado. Employers should be on the lookout for future amendments or guidance from New York City on this issue.

Covered employers should use the six-month delay to ensure they are prepared to comply with the law this fall. Foley will continue to monitor new developments as they occur.

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