

New York City's Upcoming Salary Range Disclosure Law Guidance Issues and Proposed Amendments Are Introduced

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On March 28, 2022, the New York City Commission on Human Rights released official [guidance](#) (Guidance) regarding the upcoming pay transparency law, [Int. 1208-B](#) (Law), which requires all advertisements for jobs, promotions, and transfer opportunities for positions performed in the City to include a minimum and maximum salary range. As we [previously reported](#), the City Council passed the Law on December 15, 2021, and it currently is expected to take effect on May 15, 2022.

In addition, amendments to the Law have recently been introduced in the New York City Council ([T2022-5021](#) (Bill)) which, if passed, will modify the Law in important ways, including delaying its effective date and further clarifying its requirements.

Covered Employers

The Law currently applies to all New York City employers that employ four or more persons. The Bill would increase the threshold to employers that employ fifteen or more persons. Under both, employers must include independent contractors furthering the employer's business as well as an employer's parent, spouse, domestic partner, or child working for the employer in the count of persons when determining whether the law applies to their business. The Guidance clarifies that all employees regardless of work location must be counted and that only one must work in the City for an employer to be covered.

Clarification of the Term "Salary"

The Law requires employers to post the minimum and maximum "salary" that the employer in good faith believes it would pay for any advertised position. The Guidance explains that the term "salary" encompasses base wages (e.g., \$15 per hour) and other rates of pay (e.g., \$50,000 annual salary)

and states that the range cannot be open ended (e.g., \$15 per hour and up). The Bill, however, would amend the Law to explicitly make clear that the requirement applies to non-exempt employees who are paid an hourly wage, by stating that employers must post the minimum and maximum “*hourly or salary compensation...*”

The Guidance further explains, “[s]alary does not include other forms of compensation or benefits offered in connection with the advertised [position]” and gives examples of compensation that does not need to be included, such as:

- commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging
- overtime pay
- benefits (including group health benefits, retirement benefits, and paid or unpaid time off) and
- severance pay.

In other words, only the base wage or salary for the advertised position must be stated.

Remote Positions

The Guidance advises employers (irrespective of location) to abide by the 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.” Thus, employers who have at least one employee in New York City should remain mindful of the need to post salary ranges even for remote positions, if the job might be filled by a City resident.

The Bill proposes to amend the Law to expressly exclude “[p]ositions that are not required to be performed, at least in part, in the city of New York.” This additional exclusion appears to eliminate the need to include the pay transparency notice for fully remote positions where work is not required to be performed in New York City, which appears to address concerns raised by [Colorado’s similar pay transparency law](#).

Other Exceptions

The Bill also proposes to amend the Law to eliminate the requirement for posting a salary range when the posting is a general “help wanted” sign without reference to a particular position.

Effective Date

As it stands, the Law becomes effective beginning May 15, 2022. The Bill would push back this effective date to November 1, 2022.

Whether this proposed legislation becomes effective or not, employers and their agents (e.g., recruiters) should review their current protocols for internal and external postings of jobs, promotions, and transfers for positions located in New York City. Employers should also take this opportunity to review how they determine salary ranges for positions, including the relevant factors they rely on for [determining compensation](#). The City Council is holding a hearing on April 5, 2022 to further discuss the Bill.

Should the Bill be enacted, we anticipate updated guidance from the Commission on Human Rights.

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