

Three Steps Employers Everywhere Should Take as New York City's Pay Transparency Law Takes Effect

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On November 1, 2022, job postings for positions in New York City – including remote positions that *can be* performed in New York City – must include a salary range listing the minimum and maximum salary or hourly wage amounts the employer believes it will offer for the advertised job. New York City's law follows a similar measure in Colorado, with additional pay transparency requirements in [California](#), Washington state, and potentially New York State slated to follow.

The New York City law is relatively typical of the new wave of pay transparency laws that are being considered by state legislatures nationwide. It applies to all employers with at least four (4) employees or independent contractors (even if properly classified as such), and at least one (1) employee working in New York City. Such employers must include in any job advertisement or listing a description of the lowest and highest salary or hourly wage that the employer believes in good faith as of the time of the posting that it will pay for the position. Unlike Colorado's pay transparency law, employers need not include amounts payable as benefits, bonuses, commissions, or other compensation – only hourly wages or salary. The law applies not only to external job postings but also to internal promotion or transfer opportunities. The law applies to any job opportunity that *can or will* be performed, in whole or part, in New York City, including remotely from the employee's home. The law provides for steep maximum penalties of up to \$250,000 per violation, though employers can avoid penalties for a first-time violation by correcting the job posting within 30 days of receiving notice of the violation.

Employers face several challenges from pay transparency laws like New York City's. For example, some employers regard their pay data as proprietary information, which now must be disclosed publicly in job listings. That said, many employers also find benefit in setting applicants' pay expectations prior to investing time in interviewing applicants who would not be willing to accept an eventual offer. Likewise, pay transparency laws can bring pay disparities among existing employees to light. For example, if an employer discloses that a position has a pay range of \$100,000 - \$250,000, an employee on the lower end of the scale may assume that they are paid less than others due to their sex or other protected characteristic. The employer then has the burden to justify the differential under many existing pay discrimination laws.

With pay transparency becoming a nationwide trend, employers across the country – particularly those with employees in the affected states or who offer remote positions – should take several steps

to identify and address pay equity issues that may be brought to light by pay transparency laws:

- **Evaluate Employee Compensation for Potential Disparities:** An ounce of prevention is worth a pound of cure, and if employers review and address pay disparities before disclosing a pay range, the risk of disclosure can be greatly reduced.
- **Create, Bolster, and Publish Compensation Policies:** Private sector compensation is often based on numerous factors about the employee's position and background, and employer transparency about these factors both bolsters arguments that differences are justified by legitimate concerns and may educate employees on why they are paid differently, so they do not jump to the conclusion of discrimination.
- **Consider Whether Positions Should Be Fully Remote:** Pay transparency laws offer few options for employers that do not wish to publish pay ranges, but in some cases, the laws may not apply if a position is tied to a specific geographical area based on legitimate, business justifications.

From their start in Colorado and New York City, pay transparency laws will likely proliferate to numerous other jurisdictions, including some of the country's major commercial centers.

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