

New York Issues Guidance, Proposes Regulations on Newly Effective Pay Transparency Requirements

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Pay transparency obligations are in effect in New York State, and the state Department of Labor has issued employer guidance and proposed regulations.

As of September 17, 2023, covered employers must include in any advertisement for a job, promotion, or transfer opportunity the minimum and maximum annual salary or hourly rate that the employer believes, in good faith, they are willing to pay the successful applicant at the time of the posting.

To assist employers to comply with this new legislation, the New York State Department of Labor issued guidance, which includes fact sheets and FAQs, as well as proposed regulations seeking to clarify an employer's obligations.

Important takeaways from the issued guidance and proposed regulations

include:

1) The obligations apply to private employers with at least four employees who are advertising new positions, promotions, or transfer opportunities;

2) The obligations apply to all jobs physically performed, at least in part, in New York State, as well as jobs performed outside of the state that report to a supervisor, office, or work site in New York.

- But the obligations do *not* apply to a job where incidental or infrequent appearances are required in New York State.
- The guidance does not provide clarification on what it means to “report to” a supervisor, office, or other work site in New York.

3) The obligations are not applicable to temporary firms, such as temporary hire agencies or staffing agencies for temporary positions with clients.

- Wage obligations *apply* for jobs advertisements to work at the temporary help firm itself.

4) Job advertisements must include a salary range for base pay and generally also must include job descriptions:

- Base pay cannot be conflated with other types of benefits or payment, such as commissions, tips, bonuses, stocks, meals, lodging, insurance, retirement plans, severance, and paid time off. But employers are not prohibited from separately providing information on additional relevant compensation or benefits beyond the requirements of providing base pay if they desire. For example, a range of compensation for a tipped job

may be stated as “\$18 dollars an hour,” but it may also exceed the requirements by stating “18 dollars an hour plus tips.”

- The regulations acknowledge that there may be circumstances where an employer pays higher than the posted good faith range, such as when an employer needs to increase the hiring budget to attract qualified candidates or when specific experience, education, or change in the market requires it.
- Salary ranges must be provided for multiple levels of seniority, geographic location, or region.

5) Job Descriptions

- A job advertisement must include a job description, to the extent one exists.
- A job description may not be required in the limited circumstance where the name of the position or title conveys the full extent of the duties, *i.e.*, a position for a dishwasher.
- There remains no obligation to post an advertisement for any position.

6) Third-Party Postings

- Employers are required to include a base salary range in advertisements whether they are posted directly by the employer or by a third-party platform.
- Employers are responsible for compliance for all job advertisement they have consented to post.
- Employers will not be responsible for job advertisements that

are “scraped” or automatically aggregated and posted by a third-party without their knowledge or consent.

Lastly, the law does not prohibit employers from hiring, promoting, or transferring employees without posting a job advertisement and does not require employers to use a specific medium for posting job advertisements.

In addition to New York City, other localities in New York (Albany County, Ithaca, and Westchester County) have enacted similar legislation. In fact, Westchester County amended its law to eliminate language that it is preempted by state law.

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National Law Review, Volume XIII, Number 268

Source URL: <https://natlawreview.com/article/new-york-issues-guidance-proposes-regulations-newly-effective-pay-transparency>