

Attention, NYC Employers: Include Reasonable Salary Ranges in Your Recruiting Posts or Risk Agency Scrutiny

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New York City's salary transparency law, which officially took effect in November 2022, requires "an employment agency, employer, or employee or agent thereof" to include a "good faith" salary or hourly wage range for every job, promotion, or transfer opportunity advertised for positions within New York City or involving work to be performed within its jurisdiction. *Employers beware: New York City is now actively enforcing this salary transparency law through enforcement actions.*

Between October and December 2023, the New York City Commission on Human Rights ("Commission") initiated roughly three dozen complaints against employers and employment agencies for salary transparency violations pursuant to [§ 8-109\(c\)](#) of the New York City Human Rights Law ("NYCHRL"), according to information available on the Commission's [website](#).

"Good Faith" Requirement

Although it was anticipated that enforcement efforts would initially focus on companies that failed to include salary ranges in job postings altogether, the Commission has also brought several actions against companies that did post salary ranges, but where, according to the Commission, the ranges failed to qualify as "good faith" estimates, per the law's requirement.

In monitoring these actions, some observers have been surprised by the narrowness with which the Commission has construed the "good faith" requirement. For instance, the Commission brought a complaint against [JK Partners](#) stating that five listings displaying salary ranges of \$150,000 - \$225,000 were not in "good faith." Thus, a range of only \$75,000 difference was deemed too broad to meet the standard of "good faith." Likewise, the Commission brought a complaint against [Tesla](#) claiming that a job listing containing a range of \$18.00 - \$48.00 per hour was not made in "good faith." Thus, the Commission deemed the range of a \$30.00 difference per hour to lack "good faith."

"Employment Agency" Postings

Apart from focusing on companies that advertised job openings on their own websites, the

Commission filed complaints against several employment agencies maintaining job search platforms containing a number of job postings which failed to contain salary and wage ranges or which listed ranges that did not meet the standard of “good faith.”

For instance, the Commission initiated separate actions against various employment agencies, such as [Zip Recruiter](#), [Indeed](#), and [Career Builder](#), for posting job advertisements on their job search platforms for positions within New York City that either omitted salary and wage ranges or provided ranges deemed inadequate to be in “good faith.” Moreover, the Commission noted in the complaints that while these companies “consistently provide estimated salary ranges based on similar jobs and user generated data when hirers fail to provide this information, [the companies’ estimates are] not binding.”

Furthermore, companies can also be deemed non-compliant for job postings on platforms maintained by employment agencies, such as Indeed.com. As evidenced in the Commission’s complaint against [the Dominick Hotel](#), the hotel is alleged to be in violation of the salary transparency law as a result of various job advertisements for the hotel posted on Indeed.com that did not display salary ranges for positions in New York City or positions involving work to be performed in New York City.

Advertisements for Remote Job Opportunities

As discussed, New York City’s salary transparency law applies to job postings for positions within New York City or involving work to be performed within its jurisdiction. Significantly, the Commission has construed the law to also reach job postings for remote positions that *could* be performed in New York City. For example, the Commission brought an action against [Headway Behavioral Health Management Services](#) regarding an advertisement for a remote employment opportunity that failed to contain salary ranges, where the advertisement stated that “Headway employees work remotely across the US, with the option to work from our NYC HQ.”

No Financial Penalties or Damages (Yet)

New York City’s salary transparency law empowers the Commission to impose fines of up to \$250,000 per violation. However, the law further requires that first-time violators are afforded an opportunity to rectify non-compliant job advertisements within 30 days without facing any penalties, according to a [Fact Sheet](#) published by the Commission in May 2022.

To date, the Commission has focused on ensuring compliance with the salary transparency law rather than imposing fines for violations. Each complaint brought by the Commission thus far seeks an order to compel the companies to undertake all necessary modifications to their policies, practices, and procedures to comply with the salary transparency law going forward and directing the companies to engage in trainings, policy revisions, posting and notice to employees, and monitoring, without any mention of financial penalties or damages. Notably, the law does permit workers to take legal action against their current employers for violations, although it does not extend the same recourse to job seekers against prospective employers.

What’s Next?

Salary transparency is a growing trend across the country, and it is increasingly becoming an enforcement priority of regulators. While there remains some ambiguity in New York City’s salary

transparency law regarding the specificity employers must provide to ensure their compliance, recent actions by the Commission have provided additional insight and guidance into what constitutes a “good faith” salary range under the law.

During this period of uncertainty surrounding the salary transparency law, employers must be aware of what their recruiters and employment agencies are posting on their behalf. They may also find it necessary to revisit their job advertisements to ensure compliance, in light of these new enforcement efforts. Should employers opt for posting broad salary or hourly ranges, they must be prepared to provide justification, such as whether they are seeking candidates for entry-level positions or those with more experience. Regardless, there is still a risk of enhanced scrutiny should companies decide to post broad ranges.

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