

New York State Bill Mandating Salary Range Disclosure by Employers Awaits Governor's Signature

The New York State Legislature recently passed a bill requiring certain employers to include compensation ranges on all advertisements for a job, promotion, or a transfer opportunity. This bill largely mirrors the recently enacted New York City Salary Range Transparency Act, which is set to take effect on November 1, 2022. The potential amendment to the New York Labor Law is awaiting Governor Kathy Hochul's signature. If signed, the law will take effect 270 days after execution by the Governor. Provided below is a summary of this new legislation.

Who does the law apply to?

- Any employer with four or more employees, and where the job in question will be performed at least, in part, in the State of New York.
- Any person or entity acting as an employment agent or recruiter.
- However, the bill does not apply to "temporary help firms." The New York State Wage Theft Prevention Act currently requires that at the time of the initial interview or hire, a temporary help firm must notify the applicant or employee of the range of hourly wages he or she will likely earn based on the assignment that the employee is eligible for.

What must be included on an advertisement for a job, promotion, or a transfer opportunity?

- The actual compensation or the range of compensation.
 - "Range of compensation" is defined as the minimum and maximum annual salary or hourly range of compensation that the employer in good faith believes to be accurate at the time of posting the advertisement.
- If the position is paid solely on commission, the advertisement must include a general statement that the individual's compensation shall be based on commission.
- If a job description for the opportunity exists, it must be included with the posting or advertisement.

What are the potential penalties?

- Though the bill does not include a provision that expressly permits an individual to bring a private cause of action, it does provide that any individual who is impacted by a violation of this law may file a complaint with the Commissioner of the Department of Labor. The complaint must request an investigation of such alleged violation and a statement setting forth the appropriate remedy.
- An employer who violates this law would be subject to a civil penalty of \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 for the third or any violations thereafter.

How does this bill differ from New York City's Salary Range Transparency Act?

- The New York City law does not require the advertisement to include a statement for employees who would be paid solely on a commission basis.
- The New York City law does not require the advertisement to include a job description.
- The State law adds a record-keeping requirement. Employers must maintain a history of the compensation ranges for each job, promotion or transfer opportunities, and the job description for such positions (if the job description exists).
- It is important to note that bill includes a provision stating that the law shall not supersede or preempt any local law.

What should employers do next?

If the bill is signed into law, the Department of Labor is tasked with issuing guidance and governing regulations. While the guidance/regulations will likely shed additional light on an employer's obligations, employers may wish to start preparing for this law to take effect. As such, employers should consider the following:

- Consider needed revisions to existing job posting templates and job descriptions;
- Assessing the appropriate compensation ranges for all positions; and
- Training all hiring personnel (including recruiters).

KD IS HERE TO HELP

The experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck are available to assist with the preparation of the job posting materials or any questions you may have regarding this new law. Should you need any assistance in updating your job descriptions or job posting materials, please contact Keith Gutstein (KGutstein@kaufmandolowich.com) or Edward H. Grimm (EGrimmett@kaufmandolowich.com) by email.