

## Employment & Labor Law Alert

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# The Double-Down on Pay Transparency: Starting in May, New York City Employers Must Include Salary Ranges in Job Listings

The City of New York has enacted a new watershed law prohibiting employers from posting open job listings without listing a minimum and maximum salary range. Passed by the New York City Council, the new law on pay transparency will take effect May 15, 2022.

The [new local law](#) amends the New York City Human Rights Law (NYCHRL) and requires employers with four or more employees (including independent contractors) and employment agencies to state the minimum and maximum salary for a job in an advertisement for positions within the city. The salary range is defined as extending from the lowest to the highest salary the employer in good faith believes it would pay for the advertised job at the time of the posting. However, the new law does not define "salary."

The law also applies to posted promotion and transfer opportunities. An employer's failure to include a salary range in an advertisement is now a discriminatory practice under the NYCHRL.

City Council member Helen K. Rosenthal championed the bill, which the council passed Dec. 15. Then-Mayor Bill de Blasio and his successor, Mayor Eric L. Adams,



had until Jan. 14 to approve or veto the measure. Mayor Adams returned the bill unsigned Jan. 14. In the absence of an explicit approval or denial, the bill was automatically passed and was effective Jan. 15. Per the new law, employers must begin complying 120 days after its effective date — May 15.

### Nationwide Trend

New York City's new law is part of a growing trend to increase transparency around compensation to reduce pay discrimination and is the city's latest measure imposing such salary-related requirements on employers. In 2017, [the city enacted a new salary history law](#) that restricts employers from inquiring about and using a job applicant's salary history.

The city's law joins pay transparency regulations enacted in California, Colorado, Connecticut, Maryland, Nevada, Rhode Island and Washington. In addition, both New York's Senate and Assembly have proposed legislation that would require employers to disclose salary range information to job applicants.

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## Second- and Third-Order Consequences and Company Next Steps

The level of pay transparency and disclosure required by the new law is substantial. While not a large administrative burden to add a salary range line to a job posting and description, the knock-on effects of doing so are significant:

- Employers should be aware that existing employees are likely to compare their current compensation to the compensation ranges of those posted and may ask for justification as to why they fall where they do on the scale. Employers should be prepared to respond in a meaningful way.
- Employers should be mindful that existing employees may now actively be comparing their salary ranges with comparable positions at competitive employers—and either use that market data to leverage a raise or vote with their feet and seek alternate employment elsewhere. This is particularly significant in an already mobile and employee-friendly, competitive labor market.
- Between now and when the law takes effect, consider conducting a privileged pay equity audit to ensure that current compensation decisions are aligned with legitimate, nondiscriminatory factors (such as seniority, education, location) before the curtain gets pulled back.

- Review internal and external job posting processes to ensure listings for new jobs, promotions and transfers in New York City include salary ranges. Since the new law does not define “salary,” employers should include pay ranges for salaried, exempt or hourly nonexempt positions unless or until a clarification is issued. Also unclear is whether the required salary range refers to an employee’s base salary or total compensation, so employers should explain how payment is calculated.
- Finally, the new law does not address advertisements for fully remote positions. An earlier version of the bill limited its scope to “employment within the city of New York,” but that limitation was removed by later amendments. While it remains unclear whether an advertisement by a New York City-based employer for an employee who can work full time outside the city needs to include a salary range, employers should include the salary range to be on the safe side.

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