

Employment & Labor Law Alert

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New York City Council Postpones and Amends Pay Transparency Legislation

New York City Council voted April 28 to amend the [pay transparency law](#) that was set to take effect May 15, postponing the law's effective date until Nov. 1 and making several other changes, including:

- **Hourly and Salary Wages:** Clarifying that the law applies to both hourly and salary wages
- **Remote Positions:** Excluding from the law's coverage "[p]ositions that cannot or will not be performed, at least in part, in the city of New York
- **Private Right of Action:** Limiting individual causes of action to employees who bring actions against their current employer
- **Cure Period for Initial Violations:** Reducing the penalty for an initial violation to \$0 if the employer cures the violation within 30 days of receiving notice of a complaint

Proposals to change the size of employer covered by the law to those with 15 or more employees, and to exempt from the pay disclosure requirements those job postings that merely state that an employer is hiring, but do not specify a position, did not pass. The law applies to employers with four or more employees, as originally enacted.

The amendment gives employers more time to assess their internal hiring and pay practices to ensure compliance with the new law. Employers should also be on the lookout for additional guidance from the New York City Commission on Human Rights that may aid in their assessment.

In March, the commission released a [Fact Sheet](#), that clarified key areas of the law, including:



- **Job Advertisements:** Covered job advertisements are defined broadly to include any "written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants," which can include postings on internal bulletin boards, internet and newspaper ads, and printed flyers distributed at job fairs. But employers are not required to create advertisements in order to hire.
- **Compensation Covered:** Perhaps the most ambiguous aspect of the law is its failure to define "salary" and specify what compensation information employers should be providing. The Fact Sheet and the recent amendment make clear that the law applies to hourly wages and annual salaries. Employers are not, however, required to provide information about other compensation/benefits, including:
 - Other forms of compensation, such as commissions, tips, bonuses, stock or the value of employer-provided meals or lodging
 - Health, life or other employer-provided insurance
 - Paid or unpaid time off work

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- The availability of or contributions toward a retirement or savings fund
- Severance pay
- Overtime pay

■ **Forms of Allowed Compensation Ranges:**

Employers cannot provide an open-ended range that does not clearly state both a minimum and maximum (e.g., “maximum salary \$50,000” would not comply), but if there is no flexibility on the offered compensation, employers can list a definite amount (e.g., “\$20 per hour” is acceptable).

- **Remote Positions:** The Fact Sheet states that the law applies to “positions that can or will be performed, in whole or in part, in New York City,” including jobs performed remotely from an employee’s home. This is potentially very broad and suggests that if a position is remote and could be filled by an individual in New York City, the job posting must comply with the law. This language is in tension with the exclusion in the recent amendment of “[p]ositions that cannot or will not be performed, at least in part, in the city of New York.” Employers should stay tuned for a possible revised Fact Sheet following the recent amendment.

Employers can take the additional time until Nov. 1 to assess their hiring practices and determine good faith salary ranges for each job position. They also should consider using the time to conduct privileged pay equity analyses to ensure that, as job postings make compensation information public, they have assessed where similarly situated existing employees fall within the posted ranges. Employers should prepare to respond to employee inquiries regarding why they fall where they do within a posted compensation range, and ensure that they have legitimate, nondiscriminatory reasons for compensation variances between employees in the same or similar positions.

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