

MSF CLIENT ALERT

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New York City Salary Transparency Law Effective on November 1, 2022

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After a delay in the effective date, the amendment to the New York City Human Rights Law requiring salary disclosure in job postings becomes effective November 1, 2022¹. Under the law, failure to include the minimum and maximum salary for any position located within New York City in a job posting is an unlawful discriminatory practice.

The law applies to employers with 4 or more employees² and requires posting the minimum and maximum salary for a position that it would pay when advertising a job, promotion or transfer opportunity. In stating the minimum and maximum salary for a position, the range may extend from the lowest to the highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity. If there is no flexibility in the salary being offered, the advertisement can say, for example, "\$20 per hour". Where an advertisement covers multiple jobs, promotions or transfers, it should include a range specific to each opportunity. This requirement does not apply to advertisements for temporary positions posted by a temporary help firm. However, employment agencies must include salary ranges in any listings they promote or seek to fill.

For purposes of the law, salary includes the base annual or hourly wage or rate of pay regardless of the frequency of payment. Salary does not include any other form of compensation or benefit offered such as insurance, PTO, vacation, sick leave, severance pay, overtime pay, retirement plans or any

other form of compensation such as tips, bonuses or commissions.

The law requires that salary ranges be included in any job advertisements that "can or will be performed, in whole or in part, in New York City, whether from an office, in the field or remotely from an employee's home." Given the broad applicability to remote positions, employers should be prudent in complying with the obligation to include salary ranges in job advertisements. Employers located outside of New York City are required to comply with the law if, for example, the employer is hiring for a remote position and an individual residing in New York City could hold the position.

The New York City Commission on Human Rights (the "Commission") is responsible for enforcing compliance with the law. The Commission can investigate complaints of violations of the law and individuals can bring a private cause of action for violations of the law, with the possibility of civil penalties or damages up to \$250,000. However, the Commission will not assess a civil penalty for the first complaint alleging a violation of the law so long as the employer fixes the violation within 30 days of receiving the notice of the violation.

In order to comply with the law, employers should, when contemplating new hires, promotions or transfers, develop salary ranges for those positions and include those ranges in any advertisements for jobs, promotions or transfers.

¹ Westchester County has similar legislation that will go into effect on November 6, 2022. However, per its terms, the Westchester Law will sunset upon a statewide wage transparency law going into effect. The New York State

legislature has passed such legislation, which is currently under consideration by the Governor.

² The law also applies to employers with one or more domestic workers.

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Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



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