

## New York State Pay Transparency Law Took Effect on September 17, 2023

09/20/23

The new law impacts employers and employment agencies employing four or more employees. Employers and employment agencies may not advertise a job, promotion, or transfer opportunity that will be performed physically, at least in part, in the State of New York, including one that will be performed physically outside of New York but reports to a supervisor, office, or other work site in New York, without disclosing the following:

- The compensation or a range of compensation for the job, promotion, or transfer opportunity; and
- The job description for the job, promotion, or transfer opportunity (if a description exists).

### Job Postings and Key Terms

An employer must keep and maintain necessary records including, but not limited to, the history of compensation ranges for each job, promotion, or transfer opportunity and the job description of the positions if the description exists.

The term “advertise” is defined as “to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.” “Range of compensation” means the minimum and maximum annual salary or hourly rate that the employer, in good faith, believes to be accurate at the time of the posting of an advertisement for a job opportunity. For positions compensated solely on a commission basis, employers can comply with the law by including a general statement that compensation will be based on commissions.

### Scope of Coverage Under the Law

With respect to the law’s coverage, both internal and external job opportunities for an employer or employment agency are covered. However, temporary help firms are excluded from compliance.

The law does not supersede or preempt any provisions of local law, rules, or regulations. Thus, covered employers with operations in other states or New York City must comply with all applicable state and local laws. The [New York Department of Labor](#) has published a fact sheet and FAQ for employers to access.

### Enforcement and Anti-Retaliation Measures

Employers who fail to comply with the law may face civil penalties of up to \$3,000, depending on employer size, good faith, gravity of the violation, and history of previous violations. Any person aggrieved by a violation of the statute can file a complaint with the New York Labor Commissioner. But, there is still no private right of action for an employee to file a lawsuit against the employer.

Employers are prohibited from refusing to interview, hire, or otherwise retaliate, against any applicant or employee who exercises rights under the statute.

**Takeaways:** New York employers and employment agencies should:

- Conduct an equal pay audit and evaluate the pay ranges for current positions and make an effort to understand the level of each job position, the type of work involved, and competitive market data and revise existing compensation, if needed;
- Consider implementing pay ranges/guidelines for each position;
- Ensure that salary guidelines or requirements for **any** bonus are well documented and, if possible, based on objective, predictable, and measurable criteria and document any decisions regarding same;
- Review existing job postings (including internal opportunities for promotions and transfers)-ensure they incorporate the job descriptions and the pay ranges and make sure to note in each job posting where the position will be performed; if not, create new ones.

Employers with questions can contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law](#) Team.

**Attorney**

- Tracy Armstrong

**Practice**

- Employment Law