

On Eve of NYC Job Posting Changes, California Joins Jurisdictions Requiring Pay Disclosure in Job Postings

By **Julie Levinson Werner** and **Amy C. Schwind**

In line with a growing trend of pay transparency laws in the nation, California is the next jurisdiction to require employers to share salary information in job postings. Effective January 1, 2023, California joins the ranks of several jurisdictions—including New York City—which have adopted similar requirements. New York City’s highly anticipated job posting law, which was delayed earlier this year, is scheduled to take effect November 1, 2022.

California’s New Requirements

While under current California law an employer, upon reasonable request, must provide the pay scale for a position to an applicant, California’s new law adds the following requirements: (1) employers, upon request, must provide an employee with the pay scale for the position in which the employee is currently employed and (2) employers with 15 or more employees must include the pay scale for a position in *any job posting*. “Pay scale” means the salary or hourly wage range that the employer “reasonably expects” to pay for the position.

A covered employer that engages a third party to “announce, post, publish, or otherwise make known a job posting,” must provide the pay scale to the third party, and the third party must include the pay scale in the job posting. An employer must also maintain records of job titles and wage rate history for each employee for the duration of the employment plus three years after the end of employment.

A person who claims to be aggrieved under the new legislation may file a written complaint with the Labor Commissioner within one year after the date the person learned of the violation. If the Labor Commissioner finds a violation of the

requirements, it may order the employer to pay a civil penalty of between \$100 and \$10,000 per violation. For a first violation, no penalty shall be assessed upon demonstration by the employer that all job postings for open positions have been updated to include the required pay scale. Alternatively, an aggrieved person may file a civil action for injunctive and any other appropriate relief. Among other unanswered questions, the California law does not define what it means to be aggrieved under the statute—for instance, whether only affected applicants and employees have recourse under the law or whether any third party who stumbles across the job posting online could bring a claim.

The new California legislation also separately amends certain pay data reporting requirements.

Other Jurisdictions

Salary transparency laws continue to be the trend, with New York City’s job posting law (previously detailed [here](#)) to take effect on November 1, 2022. Specifically, New York City will require as part of the New York City Human Rights Law that employers with four or more employees include the minimum and maximum annual salary or hourly wage for a position in their job postings, including those for promotion and transfer opportunities. In stating the minimum and maximum annual salary or hourly wage for a position, the range may extend from the lowest to the highest annual salary or hourly wage the employer in good faith believes at the time of the posting it would pay for the job. Similar laws have taken effect in Colorado and Connecticut already, and Washington state will also impose its own transparency law effective January 1, 2023.

The growing host of pay transparency and job posting laws in various jurisdictions likely will raise certain questions on how to comply, particularly for those employers that hire nationally as well as for those employers that hire remotely in jurisdictions that have such laws but in which the employer does not have physical offices.

If you need assistance navigating the complex employment laws governing the workplace, please contact Lowenstein Sandler's Employment Counseling & Litigation practice group.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

JULIE LEVINSON WERNER

Partner

T: 212.419.5864 / 973.597.2550

jwerner@lowenstein.com

AMY C. SCHWIND

Counsel

T: 973.597.6122

aschwind@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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