

New Year, New Job Postings: New York City Follows Colorado and Connecticut Trend By Requiring Salary Range on Job Postings

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Effective May 14, 2022, New York City will require employers with four or more employees to include the minimum and maximum salary for a position in its job postings, including those for promotion and transfer opportunities. New York City follows Colorado and Connecticut in enacting this effort to improve pay equity among employees, which became law on January 14, without approval or veto from New York City's new mayor, Eric Adams.

Under this amendment to the New York City Human Rights Law (NYCHRL), it will be an unlawful discriminatory practice for a covered employer to advertise a job, promotion, or transfer opportunity without stating the minimum and maximum salary for the position in the advertisement. This range must be what the employer believes, in good faith at the time of the posting, is the range of salary it would pay for the advertised job, promotion, or transfer opportunity.

As noted, the purpose of this law is to further New York City's effort to achieve pay equity, and it follows other recent changes to the law, including the prohibition on asking employees and job applicants about their salary histories.

It is expected that the New York City Commission on Human Rights will promulgate rules before the effective date. These rules may clarify aspects of the law that are currently unclear, such as (1) whether the law applies only to jobs for which the work will be performed in New York City or to any job posting that is disseminated in New York City, (2) what constitutes advertisement for a promotion or transfer opportunity, and (3) the full scope of what a "salary" entails. As of now, employers should start preparing for this law to take effect.

Colorado's law, which became effective in January 2021, requires an employer with one or more employees in Colorado to make reasonable efforts to inform all employees of promotional opportunities worldwide (even if the employee is unqualified for

the job). Furthermore, if the employer posts a job to be performed in Colorado, or that can be performed remotely from anywhere, the employer must include the compensation (or range thereof) in the posting for the position and descriptions of incentive compensation and benefits.

Under the Connecticut law, which became effective in October 2021, a Connecticut employer must (1) provide an applicant the wage range for a position upon the earlier of the applicant's request or prior to or at the time the applicant is made an offer, and (2) provide an employee the wage range for a position upon the hiring of the employee, a change in the employee's position, or the employee's first request for a wage range. The Connecticut Department of Labor has stated in nonbinding guidance that this law applies to employers within Connecticut even if employees are located outside of the physical confines of the state, but does not apply to any "out-of-state national employer which is not located within the State of Connecticut."

The New York City Commission on Human Rights enforces violations of the NYCHRL and, under existing provisions, may generally impose civil penalties of up to \$125,000 for unlawful discriminatory practices. Persons aggrieved by alleged discrimination in violation of the NYCHRL may also bring a private cause of action to recover monetary damages, including, but not limited to, punitive damages. The Colorado and Connecticut laws may also be enforced through civil penalties (Colorado specifies the fines could be \$500 to \$10,000 for each violation) and related private actions.

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

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