

New York Employment Laws Taking Effect in May 2022

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In 2021, the New York City Council passed an amendment to the New York City Human Rights Law (the “Salary Transparency Law”), and on November 8, 2021, New York State Governor Kathy Hochul, signed Senate Bill S2628 into law (the “Digital Workplace Monitoring Law”). Both laws are set to take effect in May 2022.

I. The Salary Transparency Law

The Salary Transparency Law was signed into law in December 2021, making it an unlawful discriminatory practice for employers to advertise jobs (internally or externally) without stating the minimum and maximum salary for the position. The law is set to take effect on May 15, 2022.

Recently, on March 22, 2022, the New York City Commission on Human Rights (“NYCCHR”) issued [guidance](#) (the “Guidance”) on the Salary Transparency Law to help workers and employers understand their rights and obligations under the law. The Guidance provides the following clarifications:

To Whom Does the Salary Transparency Law Apply?

The law applies to all employers that have four or more employees or one or more domestic workers.

- Owners and individual employers count towards the four employees;
- The four employees do not need to work in the same location;
- The employees do not need to all work in New York City; the workplace is covered if one of the employees works in New York City;
- Employment agencies are covered by the Amendment.

In addition, the Salary Transparency Law does not apply to temporary employment agencies seeking applicants to join their pool of available workers.

Which Jobs Are Covered?

According to the Guidance, the Salary Transparency Law applies to any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City.

An “advertisement” is a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants. All advertisements are covered regardless of the medium in which they are disseminated.

What Information Must Be Included?

Employers must state the minimum and maximum salary levels that they in good faith believe they are willing to pay for the advertised job, promotion, or transfer opportunity. The Guidance defines “good faith” as the salary range that the employer honestly believes at the time it is listing the job advertisement it would be willing to pay the successful applicant.

“Salary” must include the base wage or rate of pay, regardless of the frequency of payment. Importantly, salary does not include other forms of compensation or benefits offered in connection with the advertised job, promotion, or transfer opportunity, such as bonus or commissions.

How Will Salary Transparency Requirements Be Enforced?

Employers and employment agencies that are found to have violated the Salary Transparency Law may have to pay monetary damages to affected employees, along with civil penalties of up to \$250,000. Covered entities may also have to amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

Pending Amendment

On March 24, 2022, Int. 134 (the “Bill”) was proposed by certain members of the New York City Council that would alter the Salary Transparency Law. The Bill is currently pending, but, if approved, would move the effective date from May 15, 2022 to November 1, 2022. Additionally, the Bill would provide several clarifications, including that the Salary Transparency Law applies equally to hourly and salaried positions and does not apply to positions that cannot or will not be performed, at least in part, in the City of New York. We will continue to monitor the progress of the Bill.

II. Digital Workplace Monitoring Law

On November 8, 2021, New York Senate Bill S2628 was signed into law, requiring employers who monitor employee electronic communications to provide written notice to employees upon hiring and post a notice in the workspace informing employees of the surveillance. (See our previous bulletin, [New York State Expands Its Whistleblower Law and Creates New Digital Workplace Monitoring Law.](#))

The Digital Workplace Monitoring Law, which takes effect on May 7, 2022, requires any employer who monitors to provide prior written notice upon hiring to all employees when the employer monitors or otherwise intercepts: (1) telephone conversations or transmissions; (2) electronic mail or transmissions; and (3) internet access or usage by any electronic device or system. This law applies to employees who may be subject to monitoring at any and all times and by any lawful means.

Employers must obtain written acknowledgment from employees of their receipt of the notice of monitoring (which should be kept in the employee’s personnel file) and post the notice at the workplace (which can be done where other employment-related notices are posted).

If you have any questions about the laws discussed in this article, please contact **Blythe E. Lovinger** at blovinger@vedderprice.com, **Jonathan A. Wexler** at jwexler@vedderprice.com, **Victoria L. Jaus** at vjaus@vedderprice.com, **Taylor A. McCann** at tmccann@vedderprice.com, or any other Vedder Price attorney with whom you have worked.

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