

## NYC Adds a Brick to Building Pay Equity Protections for Employees

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Starting May 15, 2022, NYC employers with a total of four or more employees and/or independent contractors must include a minimum and maximum salary range for any advertisement of a job, promotion or transfer opportunity. While New York State already prohibits asking candidates for their salary history to prevent continuing historical pay inequity (though employers may ask employees for their desired pay range), the amended New York City Human Rights Law (“NYCHRL”) takes a giant step further.

The NYCHRL creates a new category of unlawful discriminatory practice if any covered employer, or its agent, advertises a job, promotion, or transfer opportunity without including that position’s minimum and maximum salary range. The NYCHRL does not distinguish between hourly or salaried positions or between internal and external advertisements or postings, so covered employers should include compensation ranges for both salaried and hourly roles and postings for applicants and current employees alike. Employers who fail to comply may be hit with a private lawsuit seeking compensatory and punitive damages, attorney’s fees, and costs; or may be subject to a civil penalty from the NYC Commission on Human Rights of up to \$125,000.

The NYCHRL requirement does not apply to (a) employers with a total of three or less employees and/or independent contractors for all of the 12-month period preceding the unlawful practice, or (b) job advertisements by temporary search firms for temporary positions. Additionally, because the law is applicable to NYC applicants and employees only, employers will have to await further guidance as to whether its protections extend to applicants and employees for remote work outside of NYC (e.g., work from home in the suburbs).

### *Takeaway / Action Items*

New York City is following a national trend towards pay equity and transparency. For example, since 2018, California requires employers to provide applicants with salary ranges upon request following an interview with violations subject to individual Private Attorney General Act (“PAGA”) lawsuits. Several other jurisdictions have similar requirements, including Colorado, Maryland and Washington (with pending laws in other States too), so employers with multiple office locations should be vigilant.

Although the NYCHRL only requires disclosure of pay ranges for open positions, the disclosure of this information will allow existing employees to compare their compensation with an advertised range for open positions similar to their own. Therefore, employers are well advised to identify pay ranges for each position in advance of May 15, 2022, and, if necessary, make adjustments to any pay disparity identified in the process for existing employees in such roles. Additionally, employers should be prepared to answer questions from existing employees whose compensation is within, but below the “high end” of the salary range, for a similar advertised position.

Employers should promptly, and in good faith, review existing job descriptions and pay rates to ensure they are accurate and current to withstand potential challenges to their practices. The postings should align with salary ranges of employees performing the same or similar duties and should distinguish the duties of employees for which different salaries are required. Though not required, employers can also go above and beyond by developing formal pay scales and training relevant hiring teams on these scales.

**If you have any questions about the language in your existing or future job descriptions, calculating salary ranges, or penalties for non-compliance, please contact a member of Freeborn’s [Labor and Employment Practice Group](#).**