

NYC Establishes Pay Transparency Law

Pay secrecy has haunted workplaces for decades. Some employers have even retaliated against employees who share their pay information with coworkers. To help protect employees' right to discuss their pay, Congress enacted the National Labor Relations Act (NLRA) in 1935. Since then, states and local governments have followed suit by enacting pay transparency laws.

To promote greater pay transparency, some jurisdictions allow employees to discuss their pay with others *plus* require employers to disclose pay ranges to job applicants and/or employees. On December 15, 2021, New York City (NYC) joined the ranks by passing a sweeping pay transparency law.

Inside the NYC law

Starting **May 15, 2022**, **NYC employers with 4 or more workers** must include the minimum and maximum salary in job postings for new hires, promotions, and transfers. The NYC Council [says](#) this minimum and maximum range should “*extend from the lowest salary to the highest salary that the employer in good faith believes it would pay for the advertised job, promotion, or transfer.*”

The law covers not just full-time employees but also independent contractors, interns, and temporary and part-time employees. Although temporary staffing agencies are exempt from the new NYC law, the New York State Wage Theft Prevention Act (WTPA) already requires these firms to provide pay information after job interviews.

In fact, the WTPA mandates all private New York employers to supply employees with specific information at the time of hire, including the rate of pay. Therefore, NYC employers with 4 or more workers are subject to both the WTPA and the new NYC pay transparency law.

Noncompliant employers can expect penalties

The new NYC law amends the New York City Human Rights Law (NYCHRL), and failure to adhere is an unlawful discriminatory practice under the NYCHRL. Noncompliant NYC employers can face up to \$125,000 in civil fines for engaging in unlawful discriminatory practices, and up to \$250,000 for willful violations.

Further guidance is anticipated

The NYC law isn't clear about the following:

- What constitutes “salary” – such as whether it consists of only base pay or a combination of pay and benefits

- Whether remote workers are covered, and if so, how coverage is determined
- Whether the law applies to all NYC employers who post job advertisements, or if it's restricted to jobs performed in NYC

Legal experts say they expect the New York City Commission on Human Rights (NYCCHR) to issue clarifying guidance in the near future.

Reactions to the NYC law

Former Manhattan councilwoman Helen Rosenthal, who co-sponsored the NYC bill, said *"Lack of salary transparency is discriminatory and anti-worker."*

Per Rosenthal, *"It is long overdue that New York City address the cause of significant inequity in the local hiring process – employers' refusal to disclose a position's salary. Forcing employers to disclose salary ranges for available positions will also help us to more readily identify systemic pay inequities."*

Human rights and worker advocates groups widely support the bill, viewing it as a necessary step toward eradicating gender- and race-based pay inequities. Proponents of pay transparency also believe that the practice makes the hiring process more efficient.

However, the NYC law has encountered backlash from business groups. One business-group executive told the Wall Street Journal that the new law bolstered the perception that New York is not a business-friendly state. According to the executive, the measure *"should never have been allowed to go through."*

Employer challenges

Some NYC employers are concerned that the new law will increase their administrative HR burdens. For example, employers may need to:

- Revise job postings before the new law takes effect
- Invest in more sophisticated tools to analyze market pay rates in order to stay competitive and ensure data accuracy

The new law might lead to fewer job applications, as applicants who earn more than the posted pay range may choose not to apply. What's more, employers who did not post the information upfront had a certain amount of leverage when it came to salary negotiations. Now that the pay range must be stated from the outset, that leverage is reduced. Candidates and employees, on the other hand, have more leverage because they can compare the posted pay range with what the employer's competitors are paying.

Next steps for NYC employers

NYC employers should start taking steps to comply with the new law. Next are some suggestions.

- Though the new law does not define “salary,” NYC employers should comply regardless of whether the job is exempt, nonexempt, salaried, or hourly – unless further guidance says otherwise.
- When reviewing job postings, do not forget to include any internal listings for promotions and transfers.
- Train managers, supervisors, and HR personnel on the new law and the importance of effective communication with job applicants and employees.
- Perform a [pay audit](#) to determine whether pay disparities exist in your company. If so, correct them promptly.
- Triple-check the pay range for each position before advertising it.
- Keep an eye out for any pending legislation, such as the New York State Senate Bill S5598B. This bill would require *“employers to disclose compensation or range of compensation to applicants and employees upon issuing an employment opportunity for internal or public viewing or upon employee request.”*
- Stay on the lookout for additional guidance on the NYC law from the NYCCHR.
- Confer with legal counsel to ensure proper application of the new law.

All employers should know about pay transparency laws

The momentum for pay transparency is escalating rapidly. According to the United States Department of Labor (DOL) website, the following states have pay transparency laws:

- California
- Minnesota
- Oregon
- Washington
- Nevada
- Colorado
- Nebraska
- Minnesota
- Michigan
- Louisiana
- Illinois
- New York
- Maine
- Massachusetts
- Connecticut
- Maryland
- Delaware
- New Jersey
- New Hampshire
- Vermont

All U.S. employers, regardless of location, should determine whether their recruiting and hiring practices are subject to state or local pay transparency laws. And if so, make sure those practices are compliant. If you're not sure whether you should be following state or local pay transparency laws, you can contact [your state's labor office](#) for clarification.