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Governor Hochul Signs Amendment to New York State Pay Transparency Law



New York State Governor Kathy Hochul signed an amendment to the New York State Pay Transparency Law (NYSPTL) on March 3, 2023. The law, which Governor Hochul first signed on December 21, 2022, requires employers to list compensation ranges for certain job, promotion, or transfer opportunities. The amendment clarifies some aspects of the original law, which is scheduled to go into effect on September 17, 2023. With the passage of this law, New York state joins a list of other jurisdictions, including [New York City](#), that have recently enacted pay transparency laws.

To Whom Does the Law Apply?

The NYSPTL applies to all employers in the state of New York with four or more employees. Notably, the NYSPTL does not count independent contractors toward that threshold (unlike the New York City law). However, the statute is unclear on whether the threshold counts an organization's total number of employees or only those employed in New York. Employers should look to impending regulations and guidance from the New York State Department of Labor (NYSDOL) to determine whether the law pertains to them.

Originally, the law required that compensation ranges be included in advertisements for all positions that can be performed in the state of New York. This was understood to mean the law would include listings for remote positions that could be performed wherever the employee resides, because the positions could potentially be filled by applicants who live and work remotely in New York. The amended law signed on March 3 narrows this scope. Now the law applies to (1) job, promotion, or transfer opportunities that will be physically performed, at least in part, in New York or (2) opportunities that will be performed outside of New York but report to a supervisor, office, or another worksite in New York. Thus, the law does not cover positions that are fully remote

and do not report to an office or supervisor in New York.

NYSPTL Requirements

The law requires employers to include "compensation ranges" in all advertisements for new jobs, promotions, and transfer opportunities. The law defines "compensation ranges" as "the minimum and maximum annual salary or hourly range of compensation for the...opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement." This includes a requirement of a general statement that the position is commission-based if the job is paid solely on commission. Unlike the New York City law, the NYSPTL also requires a job advertisement to include a description of the position if one exists. However, if a job description for a position does not exist, an employer is not required to create one.

Employers are prohibited from refusing to interview, hire, promote, or employ, or otherwise retaliating against an applicant or current employee for exercising any rights under the law.

Amendments to NYSPTL

On March 3, 2023, along with narrowing the scope of its application, Governor Hochul made the following amendments to the original law:

- Originally, the law included a record-keeping requirement for employers. The amended law eliminated the requirement for employers to keep and maintain necessary records to comply with the requirements of the NYSPTL. However, employers should still maintain records in the event they need to defend their employment practices.
- Lastly, the March 3 amendments clarify the meaning of the term "advertise," which means "to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity." Accordingly, this amendment clarifies that the law also applies to internal job advertisements.

Enforcement

The NYSDOL has the authority to enforce the law. Individuals who claim to be aggrieved under this law can file a complaint with the NYSDOL. Employers found in violation of the NYSPTL may face civil penalties of up to \$3,000 for violations of the law or related forthcoming regulations.

Employers are encouraged to seek the advice of counsel to ensure compliance with these new requirements.

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