

# GOVERNOR HOCHUL SIGNS NEW YORK STATE'S FIRST STATEWIDE "PAY TRANSPARENCY" LAW

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On December 21, 2022, Governor Kathy Hochul signed legislation aimed at improving "pay transparency," which will dramatically affect employers' job advertisement practices across New York State.

## Requirements of the New Law

The legislation, which is scheduled to take effect on September 17, 2023, amends the New York Labor Law to include Section 194-b, titled, "Mandatory Disclosure of Compensation or Range of Compensation." Section 194-b will require employers with four or more employees to include the following in any advertisement for "a job, promotion, or transfer opportunity that can or will be performed, at least in part," in the State of New York:

- The compensation or "range of compensation" for the job, promotion, or transfer opportunity
- The job description for the job, promotion, or transfer opportunity, if one exists

The term "range of compensation" is defined as "the minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate" at the time of the advertisement. Because both a minimum and a maximum are required, merely posting a "starting" or "mid-point" compensation level will be insufficient to meet these requirements. However, for positions that are paid solely on a commission basis, the law appears to be satisfied if the advertisement includes a simple statement that compensation shall be based on commission.

Notably, the law does not define what constitutes an "advertisement" for a job, promotion, or transfer opportunity. The law is also silent on the extent to which bonus compensation – which, in some industries, constitutes a substantial portion of employees' overall earnings – must be identified in covered advertisements.

The law also requires employers to maintain records of compliance with Section 194-b, including "the history" of compensation ranges and job descriptions for each job, promotion, or transfer opportunity they have advertised. The law is silent on the

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duration of this recordkeeping obligation.

An employer's failure to comply with these requirements will result in mandatory civil penalties of \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 for a third or subsequent violation. In addition, any individual who believes they have been aggrieved by a violation of the law may seek remedies against the employer by filing a complaint with the New York State Department of Labor ("NYSDOL").

Finally, 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 new Section 194-b.

### Changes and Guidance on the Horizon?

Although Governor Hochul signed the new legislation into law, she also issued an "Approval Memorandum" which seems to recognize some of the difficulties that employers are likely to face in complying with the legislation as passed. Specifically, the Approval Memorandum states "this legislation need[s] several fixes to ensure effective implementation" and that, therefore, Governor Hochul has "secured an agreement with the Legislature to make technical changes" to the law. According to the Approval Memorandum, these technical changes will:

- "[C]larify job advertising in the law"
- "[E]xclude remote job opportunities performed entirely outside of the State without a connection to a New York office or supervisor"
- "[E]liminate the previous record maintenance requirement for businesses"

In addition, the NYSDOL is required to issue rules and regulations under the law. Accordingly, employers should keep an eye out for legislative and regulatory updates, which we hope will clarify some of the key open questions surrounding implementation of the new law.

### Déjà vu for NYC and Westchester County Employers

For employers who have operations or advertise positions in New York City or Westchester County, this may all sound strikingly familiar. This is because similar local laws took effect in New York City on November 1, 2022, and in Westchester County on November 6, 2022.

As reported in the media, New York City's law is off to a rocky start with widespread criticism levied against employers for posting wide pay ranges. See, e.g., Matthew Boyle & Eric Fan, Bloomberg News, *With Pay Ranges of \$2 Million, NYC Transparency Law Is Off to a Glitchy Start* (Nov. 1, 2022), available [here](#). This may be a sign of things to come in the rest of the state.

Notably, the new legislation expressly states that it does not preempt or supersede any local law, rules, or regulations. Thus, employers in New York City, Westchester County, and any other locale that has or may adopt local pay transparency laws will need to ensure compliance with both the local and the statewide law.

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If you have any questions about the new pay transparency law or how it may impact your business, please contact **John M. Godwin** (716.848.1357), **Charles H. Kaplan** (646.218.7513), **Kinsey A. O'Brien** (716.848.1287), or any other member of our **Labor & Employment Practice**.