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Department
of Labor

PAY TRANSPARENCY LAW

Frequently Asked Questions

APPLICABILITY: WHEN DOES THIS LAW APPLY?

Q: When does the Pay Transparency Act go into effect?

A: The law goes into effect on September 17, 2023.

Q: When does a job posting need to include pay information?

A: All jobs, promotions, or transfer opportunities that will physically be performed, at least in part, in the state of New York must include a range of pay when posted. Any job, promotion, or transfer opportunity that will physically be performed outside of the state of New York but reports to a supervisor, office, or other work site in the state of New York must also include pay or salary information. This includes remote positions.

Q: What if the job posting is for a position where my employee will work remotely, telecommute, or will work from home outside of New York State?

A: If the employee or applicant is reporting to a supervisor, office, or work site in the state of New York, then the posting must include the pay or pay range, regardless of whether the employee is working from home outside New York State.

Q: My company has a promotion opportunity available. The supervisor and job location are located outside New York State, but the opportunity requires attending an annual conference in New York City. Does my company have to post a pay range for this position?

A: No, infrequent or single instances of being physically present in the state of New York for work reasons, whether it be for an occasional meeting or conference, or working with employees that are based in New York, would not be enough activity to be considered a job performed in New York State.

Q: I am posting a remote job opportunity. The individual who directly supervises this position works remotely from their home in New York State. Our company is based outside New York with our leadership team and offices located outside New York. Do I need to include a pay range in compliance with the New York State law for this position?

A: No, though the direct supervisor is working remotely from a location in New York, the company and the company's leadership is in another state. In this scenario, because the company's leadership and primary location is outside New York State, the opportunity can be performed anywhere remotely, the posting would not be required to include a range of pay under the New York State law.

Q: I work for a large law firm with offices across the United States. I work in the New York City office and am looking to apply for a promotion. This new position would report to a regional manager that oversees offices in New York, Boston and Washington DC. The manager is based in Boston, but the promotion allows for a hybrid work schedule, with 2 days in the office in New York and three from home. Does the firm need to include a range of pay for this opportunity?

A: Yes, though the direct supervisor is based outside New York State, the position includes reporting regularly to an office that is physically in New York, so this posting would be required to include a pay range.

Q: I am a hiring manager at a temporary help firm. I am recruiting potential employees to fill positions sent to my company by other employers looking to fill a short-term opening. Am I required to post a pay range for every potential temp job I might assign to an employee?

A: No, this law does not apply to those opportunities available through temporary help firms on behalf of other organizations. This can include, but is not limited to, temporary assignments with other organizations to assist with employee absences, skill shortages, seasonal workloads, or special projects. Please note that for such employees, temporary help firms must still follow applicable guidelines for Notice and Acknowledgement of Wage Rates available online at this website: dol.ny.gov/system/files/documents/2023/08/ls50.pdf.

Q: I am a hiring manager at a temporary help firm, and I am looking to hire an executive assistant to work with me at the firm. Do I have to include a pay range in the posting?

A: Yes, temporary help firms must include a range of pay when advertising an opportunity for any position that would have an employee perform work or services for the firm itself.

ADVERTISEMENTS

Q: As an employer, do I need to use specific methods of advertising an opportunity?

A: No, the law does not require employers use specific methods to advertise a job, promotion or transfer opportunity. All advertisements are covered, regardless of how they are posted. Advertisements may include, but are not limited to, a newspaper advertisement, a printed flyer that is either distributed or displayed, a social media post, an e-mail sent to a pool of more than one applicant, an e-mail sent through an electronic mailing list, or an advertisement published through any other medium.

Q: I have a job opportunity at my company, which is a small business that I run, and I sent an email to a group of potential candidates about it. Do I need to include a pay range?

A: Yes, any job opportunity sent to a group of applicants constitutes an advertisement covered by this law.

Q: I received a job posting from a recruiter that did not have a range of pay included. Does this law apply only to ads posted directly by the employer?

A: No, the law applies to advertisements whether they are posted by the employer directly or by a third-party on behalf of the employer, such as a recruiter or job listing website. Employers are responsible for complying with the law for any advertisement they have agreed to post, regardless of whether they send the information out directly, or decide to use a third-party recruitment tool, such as a recruiting service, job listing website, or a job board with postings, like those found on a college campus.

Q: My company's job posting was re-posted by a website without my consent, and it had incomplete information, including no pay range. Is my company responsible for this?

A: No, employers are not responsible for postings that are "scraped" or automatically aggregated electronically by a third-party without their knowledge or consent.

Q: Does this law require my employer to post an advertisement for every job, promotion, or transfer opportunity with the company?

A: No, the law does not prohibit an employer from hiring, promoting, or transferring employees without posting an advertisement. It does not require a posting be created for every opportunity. Employers are encouraged to create postings.

Q: Is any additional information required for a job, promotion or transfer opportunity posting beyond a pay range?

A: Yes, advertisements must contain the job description in addition to a pay range. In certain limited situations, a job description may not be required because the name of the position or title clearly conveys the full extent of the duties. For instance, an advertisement for a dishwasher who will only be washing dishes would not need a more detailed job description.

RANGE OF PAY

Q: How should I list the range of pay in a job posting?

A: The range of pay must be the minimum and maximum annual salary, piece rate or hourly rate that you, as the employer, believe in good faith to be accurate when the ad is posted. If there is no minimum or maximum range, for instance, the salary is just a fixed rate of \$50,000 per year or \$20 an hour, that is acceptable. It is not acceptable to include an open-ended salary range such as “\$17 an hour and up.”

Q: I am looking to hire plant managers for three separate factory locations in New York State. Can I offer a wide pay range to encompass the different costs of living for these regions?

A: No. The range of pay for each posting must be for a single opportunity and single geographic region. If a posting is meant to cover multiple geographic locations, or there is a posting with different possible levels of seniority, multiple ranges of pay for each opportunity must be provided. In this instance, a range must be provided for each plant manager position based on the factory location. Please see the example below:

| PLANT MANAGER LOCATION | RANGE OF PAY |
|------------------------|---------------------|
| Westchester County | \$100,000-\$125,000 |
| Erie County | \$75,000-\$90,000 |
| Clinton County | \$75,000-\$90,000 |

Q: How do I know if I am posting a pay range in good faith? Is there a definition for good faith?

A: A “good faith” pay range should be the range of pay you legitimately believe you are willing to pay at the time of the job opportunity posting. You should consider what is the legitimate range of pay that will be required to attract qualified candidates at the time you are posting the advertisement. Factors to take into account include the job market, current employee compensation levels, hiring budget, and the experience and education levels you are willing to accept for the position.

Q: Can an employer revise a pay range in an advertisement after it is publicly posted, shared and/or distributed?

A: Yes, a good faith range of pay is based on the time the original opportunity is posted. An employer may adjust the range of pay in an advertisement in good faith after collecting additional information during the hiring process.

Q: I am receiving very few applicants for a recent job posting. Am I able to change the range of pay to attract more potential employees?

A: Yes, if during the hiring process you find that you need to increase your hiring budget to attract qualified candidates, you may post a new advertisement with a new range of pay.

Q: I have interviewed an applicant with a master’s degree and would like to hire them. The pay range I originally offered was based on a candidate having a bachelor’s degree. Am I able to offer a higher salary to match the candidate’s advanced degree?

A: Yes, an employer may develop a good faith pay range based on certain qualities, including a specific education or experience level based on current employees in a similar role. If you receive an application that exceeds those qualifications, it is still in good faith to offer the candidate with higher qualifications a higher salary than the salary posted in the original advertisement.

Q: I developed a good faith pay range for a job posting based on other positions at the same level within my company. Prior to hiring, the company instituted a company-wide pay increase for all employees. Can I offer the new employee a salary above the original pay range posted based on this increase?

A: Yes, you created a good faith range based on similar positions within the company at the time of posting. It is still in good faith to offer a salary outside that original range that keeps with the company-wide pay increase at the time of hiring.

Q: I want to attract candidates with at least five years of experience, but I have been given a minimal hiring budget. Can I post a pay range based on experience to recruit the candidates I want if it is beyond the budget I have?

A: No. While you made a good faith effort to research the pay range other positions with similar experience are receiving, if the pay range posted is more than what you as an employer are willing to pay, that pay range has not been posted in good faith.

Q: I don't know what I want to pay a potential employee until I have interviewed them. Can I post a wide range of pay to cover any potential scenario?

A: No. Having a range of pay so broad as to prevent a potential applicant from understanding the legitimate pay range an employer is willing to pay is not in good faith. For a pay range with significant breadth, an employer must provide further information explaining why the range is so broad.

Q: I cannot offer a range of pay because my hiring budget only allows a single salary. How should I post this?

A: You may post a single base annual salary or hourly wage regardless of the frequency of payment. For instance: \$75,000 per year or \$25 per hour. The range of pay cannot be open ended, for instance, "\$20 per hour and up" or "maximum \$50,000 per year."

Q: Do I have to include benefits, such as health insurance in the range of pay?

A: No, the range of pay should not include other forms of compensation or benefits connected to an opportunity, such as health, life or other employer provided insurance; paid or unpaid time off such as paid sick or vacation days, leaves of absence or sabbaticals; contributions toward retirement or savings funds such as a 401(k) or pension plan; severance pay; overtime pay; or other forms of compensation such as commissions, tips, bonuses, stock or the value of employer provided meals or lodging. This additional information may be listed, in addition to and separately from the pay range.

Q: I am looking to hire servers at my restaurant and tips are an important addition to their hourly wage. Am I able to include this additional compensation information in the job posting?

A: Yes, an employer may include additional benefit or compensation information in a job posting as long as it is clear the additional compensation is not part of the base wage. For example, a pay range for a tipped server could look like "\$18 an hour," "\$18 an hour plus tips" or "\$18 an hour plus an estimated \$10 per hour in tips." It is not ok to add the expected tips to the base pay and list the hourly wage as "\$28 an hour."

Q: I am posting a job opportunity on social media. There is a character limit, but our information regarding range of pay is extensive. What can I do?

A: When there is extensive range of pay information that will not fit in an allotted advertisement space, an employer is allowed to provide the range of compensation information in a separate location, as long as the information is still available free of charge and easily accessible. If there is limited space in a single social media post, creating a thread of posts or providing a website link that connects to a full job posting with the complete range of pay information would be permitted.

COMPLAINT PROCESS

Q: Who can file a complaint if there's a potential violation of this law?

A: Any current, prospective, or potential employee or applicant who claims to be the victim of a violation may file a complaint with the New York State Department of Labor. In addition, any organization acting on behalf of a current, prospective, or potential employee or applicant may also file a complaint. This includes any recognized and certified collective bargaining agent acting on a person's behalf.

Q: How do I file a complaint?

A: Anyone who wishes to file a complaint or report a violation of New York State's Pay Transparency Law should contact the New York State Department of Labor's Division of Labor Standards. The Division of Labor Standards can be reached by phone at **1-888-52-LABOR**, by email at **LSAsk@labor.ny.gov**, or by visiting the nearest labor standards office. A list of our offices is available at: **Division of Labor Standard's Offices (dol.ny.gov/location/contact-division-labor-standards)**. If you feel you have been subject to discrimination in the hiring process, you can file a complaint with the NYS Division of Human Rights here: **NYS DHR Complaint Form (dhr.ny.gov/complaint)**

Q: I was not directly impacted, but I have noticed my employer is not complying. Can I file a complaint?

A: Yes, the New York State Department of Labor may initiate its own investigation based on tips and other available information, including reports of violations by members of the public.

Q: Can an organization representing me, such as my union, submit a claim on my behalf?

A: Yes, an organization acting on behalf of any prospective or potential employee or applicant may file a complaint, including a recognized and certified collective bargaining agent.

Q: I would like to make a complaint regarding an opportunity I saw for a position in New York City. Who should I make a complaint to?

A: New York City has its own Pay Transparency law that went into effect prior to the state law. Any complaint regarding a New York City based opportunity may still be addressed to the New York State Department of Labor. A complaint can also be filed with the New York City Commission on Human Rights. The Commission's online form is available here: **CCHR Online Form (nyc.gov/site/cchr/about/report-discrimination.page)**