

# New York City and California Pay Transparency Laws: What Employers Need to Know

## The Bottom Line

- New York City's pay transparency law will require employers to include salary ranges in job postings beginning on November 1, 2022.
- California employers will also be required to disclose this information effective January 1, 2023.
- Employers should promptly review their internal practices for determining salary ranges and update existing and new job postings to comply with these new requirements.

As lawmakers across the country continue to enact pay transparency laws, New York City and California are the latest jurisdictions requiring employers to include salary information in job postings. Starting on November 1, 2022, most New York City employers must disclose salary or hourly wage information in job advertisements. In California, covered employers will be required to include this information in job postings beginning January 1, 2023.

## New York City Pay Transparency Law

Under [New York City's pay transparency law](#), New York City employers with 4 or more employees must include in any advertisement for a job, promotion, or transfer opportunity the minimum and maximum annual salary or hourly wage for the position. The range may extend from the lowest to the highest annual salary or hourly wage that the employer in good faith believes at the time of the posting it would pay for the position.

These requirements, which take effect on November 1, 2022, do not apply to (1) positions that cannot or will not be performed, at least in part, in New York City or (2) advertisements for temporary employment at temporary help firms, as defined under the New York Labor Law.

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The New York City Commission on Human Rights (NYCCHR) published additional [guidance](#) on the law's requirements, including:

- A covered "advertisement" is defined as "a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants." This includes postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs and newspaper advertisements.
- A covered advertisement should include the minimum and maximum annual base salary or hourly wage or rate of pay. It does not need to include other forms of offered compensation or benefits such as:
  - Commissions, tips, bonuses, stock or the value of employer-provided meals or lodging
  - Overtime pay
  - Health, life or other employer-provided insurance
  - Paid or unpaid time off work, such as paid sick or vacation days, leaves of absence or sabbaticals
  - The availability of, or contributions towards retirement or savings funds, such as 401(k) plans or employer funded pension plans
  - Severance pay
- The minimum and maximum range listed cannot be open ended. For example, "\$15 per hour and up" or "maximum \$50,000 per year" would be insufficient. However, if an employer has no flexibility in the offered salary, the minimum and maximum pay rate may be identical – for example, "\$20 per hour."
- Covered employers must follow the requirements when advertising for positions that can or will be performed, in whole or in part, in New York City, whether from an office, in the field or remotely from the employee's home.
- The guidance also clarifies that the law's requirements apply to all covered advertisements seeking full-time or part-time employees, interns, domestic workers, independent contractors or any other category of worker who receives pay.

The law imposes a civil penalty of \$0 for a first violation if the employer cures the violation within 30 days of being served with a complaint by the NYCCHR. The City's guidance notes

that uncured first time violations and subsequent violations can lead to civil penalties of up to \$250,000. Notably, only current employees are authorized to bring a private cause of action for violations.

Westchester County recently passed a very similar [pay transparency ordinance](#), which takes effect on November 6, 2022 and requires employers with at least 4 employees to include salary ranges in job postings. In addition, the New York State Legislature recently passed a [pay transparency bill](#) that would similarly require including in advertisements for a job, promotion, or transfer opportunity the compensation or minimum and maximum annual salary or hourly range for the posted role, as well as a job description for the position (if one exists). The bill would also require maintaining records of historical annual salary or hourly ranges and job descriptions, although it does not state how long such records must be maintained. The bill has yet to be signed into law by Governor Kathy Hochul. Once signed, the legislation would become effective after 270 days.

## Pay Transparency in California and Beyond

California Governor Gavin Newsom recently signed into law [Senate Bill 1162](#), which imposes a variety of pay scale disclosure requirements that take effect on January 1, 2023, including:

- California employers with 15 or more employees must include in any job posting the salary or hourly wage range that the employer reasonably expects to pay for the position. If such employers engage third parties to announce, post, publish or otherwise make known a job posting, they must provide the salary or hourly wage range to the third party, which must include the pay scale in the job posting.
- All California employers must provide, upon an employee's request, the pay scale for the employee's current position. California law previously only required providing such information upon an applicant's "reasonable request" after their initial interview.
- California employers (regardless of size) must maintain records of the employee's job title and wage rate history for the duration of employment plus 3 years after termination.

The law also amends California's annual pay data reporting requirements, such as requiring submission of a separate pay data report for employees hired through labor contractors and including within each listed job category the median and mean hourly rate for employees in each combination of race, ethnicity and sex.

The passage of salary transparency laws is undoubtedly a growing trend and laws have already been passed in several other jurisdictions, including Colorado, Connecticut, and Washington, among others.

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### For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

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