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Wage Transparency Laws in the State of New York

I. OVERVIEW

In recent years, several states passed laws to promote pay transparency in order to level the playing field for protected groups and to reduce gender and racial pay gaps. On June 3, 2022, New York became the latest state to join this growing number of states by passing Senate Bill 9427 (the “Bill”). The Bill, which requires 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. Although the Bill has not yet been enacted into law, several municipalities within New York State have already enacted similar pay transparency laws, including New York City, Westchester County, Albany, and Ithaca. This memorandum provides a summary of the pay transparency laws in New York State and covered employers’ obligations thereunder.

II. NEW YORK STATE MANDATORY DISCLOSURE OF COMPENSATION ACT – Effective 270 Days after Governor Hochul signs the Bill.

a) Covered Employers:

The State law applies to all employers with four (4) or more employees, as well as an employment agency, or an employee or agent of any employer or employment agency. The term “employer” is defined as: “(i) *any person*, corporation, limited liability company, association, labor organization *or entity employing four or more employees* . . .; and (ii) *any person*, corporation, limited liability company, association *or entity acting as an employment agent or recruiter*, or otherwise connecting applicants with employers, provided that “employer” shall not include a temporary help firm.”¹

b) Requirements for Covered Employers

- (iv) Mandatory Disclosure of Compensation or Range of Compensation. – When advertising a job, promotion, or transfer opportunity that can or will be performed, at least in part, in the State of New York, employers are required to disclose the following information: “(i) the compensation or a range of compensation for such job . . .; and (ii) the job description for such job . . . if such description exists.”¹ A “range of compensation” is defined as the “minimum and maximum annual salary or hourly range of compensation . . . that the employer in good faith believes to be accurate at the time of the posting of an advertisement.” If pay for a particular position is based solely on commission, the employer is required to note same in the advertisement.
- (v) Maintain Necessary Records – Employers are required to maintain records regarding the history of compensation ranges and job descriptions, if any, for each position advertised. The Bill does not include a specific term for the retention of such records. Until the New York State Department of Labor (“NYSDOL”) issues further guidance, such records should be kept indefinitely.
- (vi) Retaliation Prohibited – The Bill prohibits employers from refusing to interview, hire, promote, employ or otherwise retaliate against an applicant or current employee for exercising their rights under the new law.

- (iv) Civil Penalty for Failure to Comply – Individuals aggrieved by a violation of this law may file a complaint with the NYS DOL. Violations of any of the requirements of the new law, or any subsequently published regulations, could result in the assessment of civil penalties pursuant to N.Y. Lab. Law § 218, which generally provides civil monetary penalties for non-wage related violations ranging from \$1,000 to \$3,000, to be assessed by the NYS DOL.
- (v) Public Awareness Campaign – The Act also directs the Commissioner of Labor to issue rules and regulations to implement the Act and to conduct a public awareness campaign to inform employers of their obligations under the Act.

II. NEW YORK CITY'S PAY TRANSPARENCY LAW – Effective November 1, 2022

a) Covered Employers:

Local Law 32 (the “Law”) applies to all employers who have four (4) or more employees, or one (1) or more domestic workers, provided at least one of those employees works in the City of New York. The law does not apply to temporary help. Owners and individual employers count toward the four employees, as do independent contractors, part-time employees, paid interns and domestic workers.

b) Requirements for Covered Employers

- (i) Mandatory Disclosure of Compensation or Range of Compensation. – When advertising a job, promotion, or transfer opportunity that can or will be performed in the City of New York, in whole or in part, whether from an office, in the field, or remotely from the employee's home, employers are required to disclose the “the minimum and maximum salary for such position.”¹ the pay information that must be included in job listings includes annual salary “or hourly wage.”² However, the posting need not include other forms of compensation or benefits such as bonuses, commissions, stock, paid time off, retirement plan contributions, etc.

While employers are not necessarily required to stay within the bounds of the salary range listed in their job postings, an employer must list the salary range that it “in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.”

The Law applies to postings for fully remote or hybrid positions. However, the law does not include “[p]ositions that cannot or will not be performed, at least in part, in the city of New York.”

Further, employers can choose to hire without using an advertising for the job opening; however, any use of a job advertisement—defined as “a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants,” through any medium, including “postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements”—must comply with the new law.

- (ii) Right to Bring a Civil Action – For an alleged violation of the Law, an employee may bring a civil action against a current employer and may recover monetary damages and/or other relief.
- (iii) Civil Penalty for Failure to Comply – The New York City Commission of Human Rights (“NYCCHR”) will accept and investigate complaints from the public regarding violations of the Law, and the NYCCHR will initiate its own investigations.

For first violations that remain uncured following the safe harbor period, as well as for any subsequent violations of the Law, covered employers may be subject to civil penalties of up to \$250,000, and/or non-monetary relief such as having to amend advertisements, update policies, conduct training, or provide notices of rights to employees or applicants.

The Law also contains a “safe harbor” provision, allowing employers 30 days after receipt of a NYCCHR complaint

¹ S. 9427A, 2021-2022 Legislative Session, § 1 (2022).

² *Id.*

³ 2022 N.Y.C. Local Law 32.

⁴ 2022 N.Y.C. Local Law 59, amending Local Law 32.

to cure non-compliance of a first-time violation of the law without facing a civil penalty.

III. WESTCHESTER COUNTY'S PAY TRANSPARENCY LAW – Effective November 6, 2022

a) Covered Employers:

Like the New York City Pay Transparency Law, the Westchester County Pay Transparency Law applies to all employers who have four (4) or more employees, as well as employment agencies. The law does not apply to temporary help.

b) Requirements for Covered Employers

- (i) Mandatory Disclosure of Compensation or Range of Compensation. – When advertising a job, promotion, or transfer opportunity for positions that can or will be performed, in whole or in part, in Westchester County, whether from an office, in the field, or remotely from the employee's home, employers are required to disclose the "the minimum and maximum salary for such position." The salary range may extend from the lowest to the highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion, or transfer opportunity.

This law does not apply to "Help Wanted" signs or similar communication, affixed to the premises of the employer or place of employment, indicating only generally, without reference to any particular positions, that an employer is accepting applications or hiring.

- (ii) Disclosure of Prospective Employee's Wage History. Employers may not rely on the wage history of a prospective employee in determining the wages for such individual, unless such prior wage history is voluntarily provided by the prospective employee to support a wage higher than the wage offered by the employer.

Further, employers may not require a prospective employee to disclose information about the employee's wage history, unless the prospective employee responds to an offer by providing prior wage information to support a wage higher than offered by the employer. The employer may seek to confirm prior wages after obtaining written authorization from the prospective employee to do so.

- (iii) Retaliation Prohibited – Employers may not retaliate against an employee or prospective employee based upon prior wage or salary history or because the employee or prospective employee has opposed any act or practice made unlawful under this law.
- (iv) Statewide Legislation – Once the New York State Mandatory Disclosure of Compensation Act becomes effective, incorporating either the same or substantially similar provisions as are contained in this law – as determined by the County Legislature via resolution – this law would become null and void.

IV. ITHACA CITY'S PAY TRANSPARENCY LAW⁶ – Effective September 1, 2022

On May 4, 2022, the City of Ithaca enacted its wage transparency law as an amendment to the city's human rights ordinance. Ithaca was the first jurisdiction in the State of New York to follow New York City and enact its own law, and the first in the State to become effective. Ithaca's law, which took effect September 1, 2022, makes it an unlawful discriminatory practice:

for an employment agency, employer, employee or agent thereof to advertise an opportunity for employment as an employee, including a job, promotion or transfer opportunity[,] without stating the minimum and maximum hourly or salary compensation for such position in such advertisement. In stating the minimum and maximum hourly or salary compensation for a position, the range may extend from the lowest to the highest hourly or salary compensation the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.

Ithaca's law does not provide any guidance as to the geographic or jurisdictional scope of the law, unlike the pay transparency laws of New York City and Westchester County.

⁵ Westchester County Laws § 700.03(09).

⁶ Ithaca City Code § 215-3(F).

V. ALBANY COUNTY'S PAY TRANSPARENCY LAW – Adopted on October 11, 2022

On May 9 2022, the Albany County Legislature introduced legislation, Local Law “E” for 2022, that would amend the Albany County Omnibus Human Rights Law to require employers to provide the minimum and maximum salary or hourly wage when advertising an open position, promotion or transfer. The legislation was passed by the Albany County Legislature and adopted on October 11, 2022. A public hearing on Local Law “E” will be held by the Albany County Executive on November 3, 2022, to allow comment.

VI. COMPLIANCE WITH WAGE TRANSPARENCY LAWS

As the State’s Mandatory Disclosure of Compensation Act has not yet been signed into law, employers in the State of New York would have to navigate various local wage transparency laws in the interim. We offer the following recommendations in order to ensure compliance with the applicable laws.

- (i) **Identify And Review Applicable Laws.** Employers should identify the jurisdictions in which the employer intends to recruit, as well as where the position is intended to be located, in order to determine what, if any, wage transparency laws apply.
- (ii) **Review The Company’s Current Recruitment Strategies.** Once applicable wage transparency laws are identified, review the company’s recruitment strategies in order to ensure compliance with applicable laws.
- (iii) **Audit Compensation for Positions.** Review and reassess compensation for each position within the company to ensure any proposed salary ranges for new positions would be consistent with existing compensation for similar positions.
- (iv) **Train Human Resource Professionnels.** Provide training to Human Resource professionals and hiring managers in order to ensure compliance with applicable laws.
- (v) **Track Wage Information.** Employers should ensure wage information required under pay transparency laws is tracked appropriately so it is readily available to be included in job postings or provided to applicants or employees.

Meltzer, Lippe, Goldstein & Breitstone, LLP will continue to keep employers abreast of further developments regarding the various wage transparency laws and look forward to assisting you navigate its requirements. Employers with questions relative to the foregoing are encouraged to contact Asish Anne Nelluvely, Esq. at anelluvely@meltzerlippe.com.

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