

CLIENT ALERT

# New York City and California Pay Transparency Laws

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In an effort to close racial, ethnic and gender wage gaps, New York City and California have passed pay transparency laws that will soon require most employers to disclose salary ranges in job postings.

### **New York City**

New York City's pay transparency law takes effect on November 1, 2022. This law is an amendment to the New York City Human Rights Law ("NYCHRL") and requires most NYC employers to include a good faith salary range for all advertised job, promotion, and transfer opportunities.

- Covered Employers
  - The law covers all employers that have four or more employees or one or more domestic workers, so long as at least one employee works in NYC. There are two exceptions: (i) employment agencies are covered regardless of their size; and (ii) temporary help firms seeking employees to join their pool of available workers are not covered (although covered employers who work with temporary help firms must comply with the law).

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- Covered Job Postings
  - Any advertisement for a job, promotion, or transfer opportunity that can or will be performed, in whole or in part, in NYC, whether from an office, in the field, or remotely is covered.
  - The law applies to all job postings seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHRL.
  - An “advertisement” is a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants, including internally.
  - The law does not prohibit employers from hiring without using an advertisement.
  
- Required Information
  - Employers must state the minimum and maximum salary they, in good faith, believe at the time of the posting they are willing to pay for the advertised job, promotion, or transfer opportunity.
  - Employers must include both a minimum and a maximum salary; the range cannot be open ended. If an employer has no flexibility in the salary they are offering, the minimum and maximum salary may be identical. Advertisements that cover multiple jobs, promotions, or transfer opportunities can include salary ranges that are specific to each opportunity.
  - Salary includes the base annual or hourly wage or rate of pay, regardless of frequency of payment.
  - Other forms of compensation or benefits, such as commissions, tips, bonuses, stock, health insurance, paid leave, overtime pay and pension plans do not need to be included in the advertisement.
  
- Enforcement and Penalties
  - The New York City Commission on Human Rights (the “Commission”) will investigate compliance with the law, on its own or in response to tips or complaints. In addition to filing complaints with the Commission, individuals with claims against their current employer can also file a lawsuit in civil court.
  - While the Commission will not assess a penalty for the first violation of the law so long as it is cured within 30 days, the Commission may assess penalties of up to \$250,000 for the first uncured violation and all subsequent violations.

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- The Commission may also require noncompliant employers to pay monetary damages to affected employees, amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

The information in this client alert and additional guidance can be found in a [fact sheet](#) published by the Commission.

### **California**

California's pay transparency law takes effect on January 1, 2023 and will require most employers to include pay ranges in all job postings. Employers will also be required to provide current employees with pay scale information for their positions upon request (employers are currently required to disclose such information to applicants upon request). Furthermore, large employers will have new reporting obligations. The new law expands the scope of current reporting obligations and does away with the current provision permitting employers to submit an EEO-1 in lieu of a pay data report.

- **Covered Employers**
  - The law's job posting requirement applies to employers with 15 or more employees, and the law's reporting requirement applies to employers with 100 or more employees.
  - The law's requirement to provide current employees with pay scale information for their position upon request applies to all employers, regardless of size, as does the law's recordkeeping requirements.
- **Covered Job Postings**
  - The law does not define a "job posting," and it is unclear whether it will follow NYC and apply to any job that can be performed in California, including remotely.
- **Required Information**
  - Covered employers must post the salary or hourly wage range that the employer reasonably expects to pay for the position.
- **Reporting Requirement**
  - Starting in 2023, each year, on or before the second Wednesday of May, any private employer with 100 or more employees must submit an annual pay data report to the California Civil Rights Department that discloses, among other things, the number of employees and median and mean hourly rates, within each listed job category, by race, ethnicity, and sex. Furthermore, any private employer with 100 or more

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workers hired through labor contractors (such as temporary staffing agencies) must submit a separate pay data report for these workers.

- Recordkeeping Obligations

- The law requires employers to maintain records of job title and wage rate history for each employee for the duration of their employment plus three years after the end of employment. These records must be made available for inspection by the Labor Commissioner.

- Enforcement and Penalties

- The Labor Commissioner may investigate complaints alleging violations of the pay scale requirements of the law and it may assess penalties of \$100 to \$10,000 per violation. The law also allows individuals who claim to be aggrieved by a violation of the law's pay scale requirements to bring a civil action for injunctive relief and any other relief that the court deems appropriate.
- Failure to file the required reports could result in penalties of \$100 per employee for an initial violation and up to \$200 per employee for any subsequent violation.
- The law creates a rebuttable presumption in favor of an employee's claim if an employer fails to keep the required records.

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Employers are advised to promptly review the requirements of these new laws and to update their job postings, reporting practices and record retention policies accordingly. Employers should also be prepared for questions from current employees about their pay relative to the pay scale in job postings. As we anticipate that pay equity will continue to generate interest among employees, lawmakers and the public at large, employers may want to take this opportunity to evaluate their compensation practices more generally.

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