



RECENT DEVELOPMENT

NYC Amends Wage Transparency Law

By Eli Z. Freedberg and Thelma Akpan on April 29, 2022

Four months ago, New York City became the second jurisdiction in the country to require employers to include the minimum and maximum potential salaries for open positions in job postings. While passed with the intention of providing applicants greater transparency about potential pay (and to narrow the pay gap), the law contained ambiguities and provided only a short lead time before the effective date of May 15, 2022. This made it difficult for many employers to prepare adequately for the law, particularly since the New York City Commission on Human Rights was not able to propound regulations to clarify the law prior to the effective date. While there was support for the underlying sentiment of the law, many groups believed it was too broad and too punitive, with an undefined geographic scope and undefined penalties, especially in light of the fast-approaching effective date.

The New York City Council listened to these concerns, and on April 28, 2022, passed an amended version of the New York City Pay Transparency Law, Int. 134-A.

What's Different?

Most importantly, the effective date of the law has been pushed to **November 1, 2022**, giving employers almost six additional months to bring their job advertisements into compliance.

Further, the city has clarified to whom the law applies. In addition to employers, 134-A specifies that employment agencies, *and employees or agents thereof*, must also include a salary range or hourly wage range in each advertised position, promotion, or transfer opportunity. Job advertisements for "temporary employment at temporary help firms" are still exempted from the law. Temporary help firms are defined as businesses that recruit and hire their own employees and assign those employees to perform work at or perform services for other organizations or businesses.

The central disclosure requirement of the law remains the same, as does the definition of salary range, as the range “the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.”

Has the Geographic Scope Narrowed?

The amendment does not, however, narrow the law’s geographic scope. While 134-A ostensibly exempts positions “that cannot or will not be performed, at least in part, in the City of New York,” in practical terms, this does not have a narrowing effect. Even under the revised version, affected nationwide employers hiring for remote jobs will still be required to post a salary range, because it would be *possible* for such positions to be performed, at least in part, in New York City regardless of where the position is actually performed.

Who Has a Private Right of Action?

134-A eliminates the broad private right of action available to New Yorkers, a major departure from the law as originally enacted. Now, only *current* employees may bring an action against their employer for violation of this law. As 134-A is, in its broadest terms, a job-posting law for *applicants*, this revision seems effectively to remove any recourse for unsuccessful applicants to non-compliant positions.

What are the Penalties?

134-A has undoubtedly provided relief to employers by providing a new avenue to cure alleged violations and avoid civil penalties. Upon receipt of a complaint from the Commission, employers will have **30 days** to cure any violation of law. Employers will then be required to submit proof that the violation has been cured, either electronically or in person. If the Commission accepts the proof of cure, the proof “shall be deemed an admission of liability for all purposes.” The law has not defined the meaning of “all purposes.”

Most importantly, 134-A provides in its civil penalties provision that employers will be fined **\$0 for the first violation**. The law does not specify fines for subsequent violations; however, the Commission will likely rely on their authority to promulgate fines up to \$250,000.

Open Questions Remain

As previously discussed, in March 2022, the Council considered amending this law by providing an exemption for job advertisements that did not advertise for a specific position, like a general call for resumes. Because this language did not become part of 134-A, it is possible that the Council

intends for employers to include ranges in such general job postings, even though such ranges could be extremely broad.

Recommendations for Employers

Employers now have an additional six months to bring their job advertisements into compliance. Employers should take steps to document and determine salary ranges for each job classification using existing or benchmarking data, in order to set a good-faith determination of pay. Employers should also use additional time to fine tune their policies regarding the publication of internal promotion and transfer opportunities. The Commission has indicated that it will update its published [fact sheet](#) upon amendment of the law, so employers should anticipate receiving additional guidance in the coming months.

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