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Law Alert: "New York State Pay Transparency Law Goes Into Effect," by Alina Nadir, Esq. and Keith Gutstein, Esq. 9-18, 2023

Employers with at least four employees have new obligations under New York State's Pay Transparency Law (New York Labor Law Section 194-b) that went into effect September 17, 2023.

New York's salary transparency law requires applicable employers (with the exception of temporary help firms) to list salary ranges for all advertised job opportunities and promotions, as well as provide a job description if one exists. The range must show the minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employers believe in good faith to be accurate at the time of the posting. If a position is commission-based, the advertisement will comply with the law if the employer includes a general statement indicating compensation will be based on commission.

With the passage of the Pay Transparency Law, New York State became the latest jurisdiction to adopt a wage transparency law, joining multiple states and cities such as California, Colorado and New York City. There has been a growing movement to enact such laws with nearly 44.8 million people in the labor force, or 26.6% of the U.S. labor force, covered by state pay range transparency laws, according to the National Women's Law Center.

March 2023 Amendments

In March 2023, Governor Hochul signed an amended version of the law passed in December 2022, which among other things, impacts the scope of jobs covered by the law and eliminates recordkeeping requirements for employers.

In the original legislation, the law mandated compensation ranges to be included in advertisements for all positions that "can or will be performed, at least in part, in New York State." The amendment changes that obligation to include a job, promotion, or transfer opportunity that "will physically be performed, at least in part, in the state of New York, including a job promotion or transfer opportunity that will physically be performed outside of New York, but reports to a supervisor, office, or other work site in New York."

The amendments also eliminate a recordkeeping requirement that would have required employers to keep and maintain necessary records to comply with the law's provisions "including, but not limited to, the history of compensation ranges for each job, promotion, or transfer opportunity and the job descriptions for such positions if such descriptions exist." Further, the amendments clarify the definition of "advertise" to mean "make available to a pool of potential applicants for internal or public viewing including electronically, a written description of an employment opportunity." The language also makes clear that "no employer shall refuse to interview, hire, promote, employ or otherwise retaliate against an applicant or current employee for exercising any rights" pursuant to the law.

Key Considerations

Employers that operate in multiple jurisdictions should make sure that they properly comply with not only New York State's law, but those pay transparency laws in local jurisdictions including New York City, Albany and Westchester County.

Further, even though recordkeeping is no longer an obligation under the law, maintaining compensation information and job descriptions records is advisable.

While there is no private right of action, complaints can be filed with the Commissioner of the New York State Department of Labor, who has the authority to impose civil penalties ranging from $1,000 to $3,000 depending upon the number of violations.

Kaufman Dolowich Can Assist

If you have questions about these developments or are in need of assistance in evaluating your compensation practices, please contact one of Kaufman Dolowich's experienced Labor & Employment Law attorneys.

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