

## "New York State's New Amendment to the Salary Transparency Law and Its Implications" By Michael D. Ganz, Esq. for the Suffolk County Electrical Contractors Association, 11-2023

On September 17, 2023 the New York Salary Transparency Law went into effect with amendments which require the disclosure of compensation ranges in job advertisements. As amended, the Salary Transparency Law now encompasses (a) remote work, (b) addresses commission only compensation, (c) clarifies the definition of a covered "advertisement," and (4) removes a potentially onerous recordkeeping requirement.

### The Original Salary Transparency Law

Initially enacted on December 21, 2022, the Salary Transparency Law created a statewide salary transparency requirement effective September 17, 2023. Notably, the Salary Transparency Law applies to all employers of four (4) or more employees in New York when advertising a job, promotion, or even a transfer opportunity. Employment advertisements must disclose the "compensation or range of compensation" for a position, with a potential civil penalty for violations of up to \$1,000 for a first violation, \$2,000 for a second violation, and \$3,000 for a third or subsequent violation. The NYSDOL website is largely silent on the law but has stated that "The range should show the minimum and maximum annual salary or hourly rates that the employer believes in good faith to be accurate at the time of posting." If there is no range, but a stated amount of compensation, that must be disclosed.

As originally enacted, the Salary Transparency Law largely tracked the preexisting New York City salary transparency law<sup>1</sup> which it was modeled on, except that it (1) instituted a requirement for employers to keep detailed records of salary ranges for six years and (2) required employers to include a job description when advertising a job, promotion, or transfer opportunity.

### The Amendments to Salary Transparency Law

#### 1. Remote Workers

The Amendment clarifies the Salary Transparency Law's application to remote workers. The law originally applied to jobs that 'could or would be performed, at least in part, in the State of New York', but did not directly address remote workers. As amended, employers must disclose the compensation or range of compensation for any position that will be physically 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." Accordingly, job advertisements must disclose compensation for certain positions even where the job will ultimately be performed from another state if the individual reports to an office, a worksite, or a supervisor in New York.

#### 1. Disclosure of Compensation Ranges Not Required for Commission Only Compensation

The Amendment clarifies that a disclosure of compensation ranges is not required where compensation is made entirely on commission. In this instance, employers must only include "a general statement that compensation shall be based on commission," However, this disclosure would not be sufficient if compensation was based partially on commissions and partially on set wages or salary.

## 1. Onerous Record Keeping Requirements Have Been Curtailed

The Amendment removes the Salary Transparency Law's original recordkeeping requirement, which would have created an independent violation for employers that did not keep records of salary disclosures and job descriptions. Now, employers will no longer expressly be required to keep records of compensation range and job description history for each covered advertisement. Notwithstanding the amendment, employers should maintain records of all compensation provided to employees pursuant to preexisting New York Labor Law recordkeeping obligations.

### 1. The definition of "advertise" is clarified

*The Amendment defines "advertise" under the law as "to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity." which is consistent with the New York City salary transparency law, again, which it was modeled after.*

### 1. There is no private right of action

The Salary Transparency Law does not create a private right of action by an individual who feels aggrieved by a violation of the law. Instead, the New York Transparency Law permits the NYS Department of Labor to investigate complaints and assess penalties.

### 1. Considerations for the Future

As the New York State Transparency Law with its current amendments has just gone into effect, employers are left without formal guidance as to its application. Indeed, the application to "remote" workers is still nebulous. However, good practice points would be for employers to (1) determine and document salary ranges for all positions where individuals are currently working within New York and for all positions where employees report to a supervisor, office, or other worksite in New York; and (2) monitor for the final NYS DOL guidance.

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1 NYC's Salary Transparency Law went into effect on November 1, 2022.

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