



New York State's Pay Transparency Law Goes into Effect on September 17, 2023

As a reminder to employers, the New York State Pay Transparency Law goes into effect this Sunday, September 17, 2023. Once effective, it will be unlawful for employers to advertise a job, promotion, or transfer opportunity without disclosing the compensation or compensation range for the position.

RMF previously published an article detailing employers' obligations under the pay transparency law. For more information, please see RMF's "[Employment Law Update – October 2022](#)." Since that time, legislative amendments have resulted in four significant modifications to the law that employers must be aware of in preparation for this Sunday's effective date.

The Four Amendments Employers Should Know

Employers should be aware of the following revisions to the law and ensure that they are prepared for this weekend's upcoming compliance deadline:

(1) Remote Employment Advertisements – the amended law now applies to advertisements for any job, promotion, or transfer opportunity that “will physically be performed, at least in part, in the state of New York,” including any “that will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York.” This means that while the definition seems to have been somewhat narrowed, advertisements for positions targeting out-of-state remote employees may still be covered under this law.

(2) Recordkeeping – the amended law no longer requires employers to maintain records documenting the history of compensation ranges and job descriptions for each job, promotion, or transfer opportunity. While this means that such recordkeeping is not mandated, employers should take note that internal record maintenance is good practice and could be used as a defense in a future action.

(3) Advertisement Definition – the amended law now defines what it means to “advertise” an employment position. To advertise now means, “to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.” Therefore, both internal and external employment opportunity postings must comply with this law.

(4) Positions Solely Paid by Commission – the amended law now clarifies that advertisements for any job, promotion, or transfer opportunity paid solely on commission shall only require disclosure of “a general statement that compensation shall be based on commission.” Employers should be aware, however, that advertisements for positions paid by both commission and wages are still subject to the law's compensation disclosure requirements.

The New York State Department of Labor also recently proposed regulations to accompany the New York State Pay Transparency Law. Although the regulations are not yet final, the initial guidance provides employers with insight into how the law aims to practically function. The DOL will accept comments on the proposed regulations through November 12, 2023.

Ruskin Moscou Faltischek will continue to monitor the status of the proposed regulations and is prepared to assist employers in complying with the New York State pay transparency requirements. If you have any questions regarding pay transparency or any other employment related issue, please contact:

Kimberly B. Malerba, Esq.
516.663.6679
kmalerba@rmfpc.com

Nicole E. Osborne, Esq.
516.663.6687
nosborne@rmfpc.com

*This law alert was drafted with assistance from law clerk Nicolas Florio.