

Blog Post

New Pay Transparency Laws Change Job Postings From Coast to Coast

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A growing number of cities and states are pushing for greater pay transparency in the hiring process. To add to that growing list, California and New York have both passed pay transparency laws in recent months, leaving employers to modify how they seek out new talent. However, employers should keep in mind that not all pay transparency laws are the same, and must take the proper steps to ensure they are fully complying with the laws of the states in which they are based *and* where their employees reside.

California

California Senate Bill (“SB”) 1162

SB 1162 will take effect on January 1, 2023 after Governor Gavin Newsom signed it in September. The law requires employers with 15 or more employees to disclose a “pay scale” in job postings, which is the employer’s reasonably expected salary or hourly wage range for the position. Additionally, if requested, employers must also provide the pay scale to an employee for the position in which they are currently employed. Further, if an employer engages a third party to post, publish, or advertise a job posting, that employer must provide the pay scale to the third party to include in the job posting.

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In addition to job postings, the bill requires employers to maintain job title and compensation records for each employee for the duration of their employment, plus three years following the end of their employment.

Unique to California, the law also mandates a requirement in which employers with 100 or more employees must submit an annual pay data report to the state. The report must disclose median and mean hourly rates for each of 10 specified job categories. The report must also include the median and mean hourly rates for each combination of race, ethnicity, and sex, within each job category. Additionally, any private employer with 100 or more workers hired through labor contractors, must submit a separate pay data report with the same requirements, exclusively for these workers.

New York

The New York City Salary Transparency Act

The City of New York passed its own pay transparency law on January 15, 2022 that, after being delayed and amended on May 12, 2022, is slated to go into effect on November 1, 2022. Under the law, New York City employers with four or more employees, and at least one employee working in New York City, must state the minimum and maximum salary or hourly wage rate they are willing to pay for every open position. The requirement applies regardless of whether the position is posted internally or externally if the work can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee's home. Postings for full- or part-time employees, interns, domestic workers, and independent contractors are covered by the law. Like California's SB 1162, the New York Salary Transparency Act also applies to advertisements posted by third-parties such as recruiting agencies. Employers are not required, however, to include information about other forms

of compensation like bonuses, commissions, and health insurance, but need only provide information as to the “base” pay.

The New York City Salary Transparency Act imposes stiff consequences for violations. An employer has 30 days from receipt of an initial complaint of non-compliance to cure the employer’s first violation of the law before facing a fine from the New York City Commission on Human Rights. The law also provides for a private right of action—however, only *current* employees may sue their employer for an alleged violation of the law.

New York State’s Salary Transparency Law- Senate Bill S5598B

The State of New York may also soon pass its own salary transparency law. Senate Bill S5598B, which would require employers to disclose compensation or a range of compensation for jobs that will or can be performed in the state of New York, is currently pending in the New York State Senate Rules Committee. Like the New York City law, the bill would require most employers with four or more employees to post at least the minimum and a maximum annual salary or hourly range offered for a job, promotion, or transfer opportunity. However, unlike the New York City law, the bill would also require disclosure of the job description (if one exists), and a general description of other forms of compensation offered, such as bonuses, stock options, and commissions, if applicable.

If passed as drafted, employers should note that the law would not supersede or preempt the New York City Salary Transparency Act. Meaning, employers in the City of New York would have to comply with both laws.

The bill has not been passed by either house of the state legislature but if passed by both houses, and signed into law by the governor, the law would take effect 270 days after the governor’s signature. The

New York State Senate is not expected to take action on the bill before it returns to session in January 2023.

What Employers Need to Know

Although California, New York City, and New York State's salary transparency laws differ in key respects, they all require covered employers to disclose the salary range for positions that will or can be performed in their respective jurisdictions.

Pay transparency laws can pose several risks to employers, and as always, employers should brush up on the applicable laws for the states in which they employ individuals, including the states where employees may also work remotely. Besides the patchwork of compliance issues these laws create, they can also create retention and competitiveness concerns. Publicizing salary ranges for prospective hires may elicit resentment among current employees and cause upward pressure on compensation offered in high-demand positions. On the other hand, these laws could also provide employers a leg-up in determining the real market value for some positions, which would allow employers to more accurately calibrate employee pay. If you have questions on how these laws may affect your business, or are seeking guidance on how to comply, contact your Akerman attorney.

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