

Labor & Employment



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New York Employers, Take Note! Two New Laws Effective in May

New York businesses face not one, but two new laws which significantly impact employers and take effect next month. The first requires employers in New York City to provide salary ranges when advertising employment opportunities (effective May 15, 2022). The second mandates that New York employers provide prior notice and posting if they intend to monitor employee telephone, e-mail, or Internet usage (effective May 7, 2022). Read below for important summaries of the new laws and their impact on your business.

Show Me the Money: NYC Employers Must Provide Salary Information When Advertising for Jobs, Promotions, and Transfers

Employers in New York City will soon be required to provide minimum and maximum salary ranges when advertising employment opportunities. The relevant law ([Int. 1208-2018](#)) amends the New York City Human Rights Law (“NYCHRL”) and becomes effective May 15, 2022.

TO WHOM DOES THE LAW APPLY?

This amendment applies to employers or employment agencies (other than temporary staffing agencies that advertise temporary positions) with four or more workers, which includes independent contractors in furtherance of an employer’s business and employed family members. As long as one employee works in New York City, the law will apply.

WHAT IS AN “ADVERTISEMENT”?

Recent guidance issued by the NYC Commission on Human Rights (“NYCCHR”) defines “advertisement” to be “a written description of an available job, promotion, or transfer

opportunity that is publicized to a pool of potential applicants. Such advertisements are covered regardless of the medium in which they are disseminated. Covered listings include postings on internal bulletin boards, Internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements.”

Any position advertised by a covered employer if to be performed in NYC, even just in part, whether in an office, home, in the field, or other remote location, is subject to this law.

WHAT SHOULD BE INCLUDED IN THE SALARY RANGE?

The amendment requires inclusion of a salary range “from the lowest salary to the highest salary that the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion, or transfer.” If there is no flexibility, the salary can be stated firmly as a single number, such as \$15 per hour or \$50,000 annually.

Salary is to include only base wage or rate of pay and not any other form of compensation or benefits, such as bonuses, health insurance, paid time off, 401k contributions, overtime pay, commissions, tips, stock, or equity grants.

WHAT ARE THE CONSEQUENCES FOR NON-COMPLIANCE?

A private right of action can be brought within three years for a violation of this law and compensatory and punitive damages, as well as attorney's fees and costs, are recoverable. In addition, the law may be enforced by the NYCCHR. Employers and employment agencies found to have violated the NYCHRL may have to pay monetary damages to affected employees and civil penalties of up to \$125,000, and as much as \$250,000 if the violation is deemed willful. Covered entities may also be required to amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

POTENTIAL UPDATE

There is a bill, [Int. 134](#), before the City Council that seeks the following revisions/clarifications:

- Excluding employers with fewer than 15 employees;
- Clarifying that the law applies to both hourly employees and those with salaried positions;
- Exempting (i) positions that can be performed, even just in part, outside of NYC and (ii) announcements that an employer is hiring without referring to any specific position; and
- Moving the effective date of the amendment to November 1, 2022.

FURTHER GUIDANCE

The New York City Commission on Human Rights has published some [interpretive guidance](#) before the law's effective date. There is currently no guidance on the applicability of the amendment to remote workers. In the interim, NYC employers should be prepared to communicate pay ranges for all external and internal job postings, promotions, and transfers.

Phone-Tapping Your Troubles Away: Prior Notice Required for Monitoring Employee Communications

A [recent amendment](#) to the New York Civil Rights Law mandates that employers with places of business in the State must provide prior notice concerning the monitoring of employee telephone, e-mail, or Internet usage. This amendment is effective May 7, 2022.

TO WHOM DOES THE LAW APPLY?

"Employer" is defined as any individual, corporation, partnership, firm, or association with a place of business in the State. It does not include the State or any political subdivision of the State. Any employer who engages in electronic monitoring with respect to its employees is covered by the amendment.

WHAT IS "ELECTRONIC MONITORING"?

"Electronic monitoring" includes the interception of telephone conversations or transmissions, electronic mail or transmissions, or Internet access or usage of or by an employee by any electronic device or system, including but not limited to the use of a computer, telephone, wire, radio, or electromagnetic, photoelectronic, or photo-optical system used for business purposes, whether the device is personal or company-owned.

ARE THERE ANY EXCEPTIONS?

The amendment does not apply to processes that typically manage the type or volume of incoming or outgoing electronic mail or telephone voicemail or Internet usage, for example, a firewall. These processes are excluded to the extent that they are not designed to monitor or intercept the electronic mail or telephone voicemail or Internet usage of a particular individual and work solely for the purpose of computer system maintenance and/or protection.

WHAT DO EMPLOYERS NEED TO DO?

- (1) **Provide notice to new hires:** Employers who engage in electronic monitoring must give prior written notice upon hiring to all employees who are subject to electronic monitoring. The notice must be in writing and can be provided electronically, and must be acknowledged by the employee either in writing or electronically.
- (2) **Post notice for all employees (new and current):** Employers must post a notice of electronic monitoring in a conspicuous place that is readily available for viewing by its employees who are subject to electronic monitoring. Simply having a policy in an employment handbook is no longer sufficient to allow electronic monitoring by an employer.

WHAT IS THE REQUIRED WORDING OF THE NOTICE?

The notice should include the following language:

“Any and all telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage by an employee by any electronic device or system may be subject to monitoring at any and all times and by any lawful means. This includes (but is not limited to) the use of a computer, telephone, wire, radio, or electromagnetic, photoelectronic, or photo-optical systems.”

WHAT ARE THE CONSEQUENCES FOR NON-COMPLIANCE?

This amendment is subject to enforcement by the Office of the New York State Attorney General and does not allow for private suit by employees. Any employer found to be in violation of this section shall be subject to a maximum civil penalty of \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for the third and each subsequent offense.

FURTHER GUIDANCE REQUIRED

The amendment does not address whether it applies to employees who are employed by a New York-based employer but work remotely from another state. Until more detailed

guidance is provided, employers should assume that their remote employees are covered by the amendment.

For more information or assistance with either or both New York laws, contact New York-based labor and employment partners [Mara B. Levin](#), [Stephen E. Tisman](#), [Anthony A. Mingione](#), or [William J. Anthony](#), or a member of Blank Rome’s [Labor & Employment practice group](#).*

*We thank [Amelia Clegg](#) for her writing assistance with this alert.

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