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ALLIANCE

## **Reminder: New York Salary Transparency Laws and Minimum Wage Increase on the Horizon**

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On November 1, 2022, all New York City employers with four or more employees and employment agencies of all sizes must state the salary range or rate of pay when advertising a job, promotion or transfer opportunity. A similar law is expected to take effect for all New York State employers early next year. As you revise your job advertisements to comply with the new laws, please also keep in mind that the minimum wage in upstate New York State will increase on December 31, 2022 (as discussed below). This minimum wage increase does not impact New York City, Long Island or Westchester County.

### ***New York City Salary Transparency Requirements***

On December 15, 2021, as we previously noted, New York City enacted a salary transparency requirement and the New York City Commission on Human Rights (City Commission) issued guidance to assist employers in complying with the new salary transparency requirement. The guidance indicates that the law is to be interpreted to reach as “broad a geographic scope of opportunities as possible” and to cover all types of announcements for such jobs.

The law requires most private-sector employers to include a good faith salary range in advertisements for work opportunities that can or will be performed in whole or in part in New York City (this also includes all remote jobs that may be performed in New York City, even if the business is located outside the City). Advertisements are broadly defined as “a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants.” For example, employers will need to comply with the requirement when posting on internal bulletin boards, internet advertisements, distributing printed flyers at job fairs, in newspaper advertisements, and in on-line and social media postings. While advertisement is broadly construed, the law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.

When determining what to include as a salary range, the law requires that employers provide what, in good faith, at the time of the posting, they believe they are willing to pay for the advertised job, promotion or transfer opportunity. If there is no flexibility you can state “\$20 per hour” or “\$60,000 per year,” but if there is flexibility employers must provide a salary range, such as “\$18-\$22 per hour” or “\$50,000 - \$70,000 per year.” However, the salary range cannot be open-ended (i.e., “\$20 and up”).

Under this law, employers are only required to provide a salary range for the base salary or base wage that they plan to offer. They do not need to include in the advertisement other forms of compensation or benefits, such as bonuses, commissions, incentive awards, health insurance and gratuities.

The City Commission has enforcement authority to investigate entities covered by the law and employees may file a private lawsuit in civil court that can result in potential monetary damages or civil penalties up to

\$250,000. The City Commission will not assess civil penalties for an initial violation if the issue is fixed within 30 days of receiving the City Commission's notice of the violation.

## ***New York State Employer Requirements***

In addition to the requirements under the New York City Human Rights Law, all New York State employers will likely be subject to a similar salary transparency requirement as a comparable bill has passed the New York State Legislature and is expected to become law. Further, all New York employers operating in Upstate New York (i.e., north and west of Westchester County) will need to contend with a higher minimum wage that becomes effective at the end of this year.

## ***New York State Salary Transparency***

The New York State Legislature also passed a salary transparency bill, which is expected to become law 270 days after it was passed on February 28, 2023, as long as it is not vetoed by the governor. The New York State law would require employers to disclose salary range or hourly rate on postings for jobs that can or will be performed in New York State. The law would also require employers to include a job description (if one exists) and a general description of other compensation offered (e.g., fringe benefits, bonuses, stock options, commissions) in job postings. In addition, the law poses a recordkeeping requirement. Employers must keep the history of compensation ranges and any job description for each opportunity advertised.

## ***Minimum Wage Increase***

When creating jobs advertisements that meet the salary transparency requirements, employers should also be mindful of current New York minimum wage requirements and upcoming changes. As of December 31, 2022, the minimum wage for employers in New York who are outside of New York City, Long Island and Westchester County will increase from \$13.20 per hour to \$14.20 per hour. The tip credit will simultaneously increase to \$4.75 for Tipped Food Service Workers and \$2.35 for Tipped Service Employees.

<b>New York Minimum Wage Rate Schedule Effective December 31, 2022</b>				
<b>Location</b>	<b>Current Minimum Wage</b>	<b>Minimum Wage as of 12/31/2022</b>	<b>Tipped Service Employees</b>	<b>Tipped Food Service Workers</b>
New York City	\$15.00	\$15.00	\$12.50 Cash Wage \$2.50 Tip Credit	\$10.00 Cash Wage \$5.00 Tip Credit
Long Island & Westchester	\$15.00	\$15.00	\$12.50 Cash Wage \$2.50 Tip Credit	\$10.00 Cash Wage \$5.00 Tip Credit
Remainder of New York State	\$13.20	\$14.20	\$11.00 Cash Wage \$2.20 Tip Credit <u>As of 12/31/2022</u> \$11.85 Cash Wage \$2.35 Tip Credit	\$8.80 Cash Wage \$4.40 Tip Credit <u>As of 12/31/2022</u> \$9.45 Cash Wage \$4.75 Tip Credit

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