

Cooley

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On March 22, 2022, the New York City Commission on Human Rights released [its long-anticipated guidance](#) related to a January 2022 [NYC law](#) calling for pay transparency in job listings that is set to take effect on May 15, 2022. Although [a recently introduced bill](#) proposes to amend the pay transparency law to, among other things, push back its effective date, NYC employers should start preparing to comply with the pay transparency law's requirements. We have listed below practical considerations employers should take into account in preparing job postings.

Step 1: Determine whether the pay transparency law applies to your job listing

If you have four or more employees and at least one works in New York City, the pay transparency law applies to any job listing you publicize to a pool of potential applicants for a job, promotion or transfer opportunity that **could** be performed (in whole or in part) in NYC – whether from an office, in the field or remotely from the employee's home. We expect the New York City Commission on Human Rights to take an expansive view of whether a position is capable of performance in NYC.

Job listings are covered by the pay transparency law **regardless** of the medium in which they are disseminated, including postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs and newspaper advertisements. The law, however, does **not** require employers to create an advertisement in order to hire, promote, or transfer an employee or potential employee.

Step 2: Confirm that your job listing complies with the pay transparency law's requirements

If your job listing is covered by the pay transparency law, confirm that the listing complies with the following requirements:

- The job listing must provide the **minimum** and **maximum** wage rate that your business, at the time of the posting, believes in **good faith** it is willing to pay for the position. "Good faith" is based on your business's "honest belief." You must have a legitimate basis for the wage range, and the wider the range, the more scrutiny you should expect.
- Because the wage range **must** include a minimum and maximum, the following examples are insufficient: "\$15 per hour and up" and "maximum \$50,000 per year."
- If you believe in good faith that there is no flexibility in the wage being offered, the minimum and maximum wage may be identical. To demonstrate intentionality, employers likely would benefit from using a redundant wage range (e.g., "\$20 per hour to \$20 per hour"), rather than simply listing the rate once.
- The wage range does not need to include **anything but wages**. For example, employee benefits, bonuses and equity compensation can be excluded. However, if such benefits could potentially alter the wage range, this would provide a "good faith" basis to expand the job listing's wage range.

Step 3: Consider additional best practices

Employers should consider incorporating the following additional best practices:

- **Immediately** audit all job postings that are publicly available and update them as necessary. Expect individuals to comb online

job boards for noncompliant job postings.

- Train your recruiting and management teams on these new requirements, and build in a requirement that managers provide a wage range when submitting a job requisition.
- Document how your business determined each posted wage range to demonstrate that it was reached in “good faith.”
- Determine whether job postings must also comply with requirements in other jurisdictions, such as Colorado.

If you have questions about the NYC pay transparency law, please contact the Cooley employment team.

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