

NYC Council Local Law 32 Effective Nov 1, 2022

November 01, 2022

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In January of this year, the New York City Council adopted Local Law No. 32 which requires businesses in New York City to include a "good faith" salary range in all job postings. The Law was originally scheduled to go into effect on May 15, 2022. As a result of concerns raised by the business community, a recent amendment delayed the effective date to November 1, 2022. This advisory summarizes key provisions of the amended law and recent guidance issued by the New York City Commission on Human Rights (NYCCHR).

Who the Law Covers. The Law applies to employers that are covered by the New York City Human Rights Law. Thus, businesses that employed four or more individuals (or one domestic worker) at any time in the 12 months prior to advertising a job opening are subject to the new law as long as one employee worked in New York City during that time period. Moreover, business owners and family-member employees are included when determining the number of employees.

Applicability to Agencies. Employment agencies are covered by the Law regardless of their size, but temporary staffing agencies are exempt from the Law when advertising for their pool of potential workers as the ultimate employer will be required to provide wage notices to employees pursuant to the New York Wage Theft Prevention Act. N.Y. Lab. Law §§ 915, 916.

Format of Job Postings. The Law applies to advertisements for jobs, promotions, or transfer opportunities for positions to be performed in New York City. An advertisement is a written description for an available job, promotion, or transfer opportunity that is published to a group of potential applicants. The Law applies to job postings for full- and part-time employees, interns, domestic workers, independent contractors, and any other category of worker protected by the New York City Human Rights Law. Dissemination of the advertisement is defined broadly, and includes public postings via the internet, newspapers, and printed flyers, and internal postings on company intranets, websites, and bulletin boards.

Parameters of Salary Range. The advertisement must include a minimum and maximum salary (base hourly wage or annual salary) that the employer in good faith is willing to pay. Open-ended salary ranges are not permitted. When there is no flexibility on salary, the minimum and maximum numbers should be the same. Job postings need not include specifics as to other forms of compensation or benefits such as commissions, tips, bonuses, overtime pay, health and retirement benefits, time off, or severance pay.

It is important to note that the Law does not prohibit employers from hiring without using an advertisement.

Enforcement and Penalties. The NYCCHR's guidance indicates that the Law will be enforced with respect to "positions that 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." Employers that are not based in New York City are expected to comply with the Law if the position could be filled by a New York City resident or if the job might be done in part in the City. The Law *does not* apply to advertisements for positions that cannot or will not be performed at least in part in New York City.

Although the Law allows current employees to sue their employers for violations of the Law, it is expected that enforcement will generally fall to the NYCCHR. The public, including aggrieved job candidates or applicants, may report violations to the NYCCHR. The NYCCHR has discretion to investigate, address, and enforce alleged non-compliance with the Law. Pursuant to the recent amendment, first-time violators will not be monetarily penalized if, within 30 days of being served a complaint, they submit proof to the NYCCHR of having cured the job advertisement to include a compensation range. The guidance highlights that businesses that violate the Law without curing the violation or that violate the Law more than once may have to pay damages to affected employees and/or civil penalties of up to \$250,000. In addition to amending non-compliant job postings, violators also may need to create or update internal policies, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief.

Community Concerns. Advocacy groups promoting employee rights and pay equity applauded the original legislation as a critical step toward eliminating unwarranted and potentially biased pay gaps. Business groups, however, had a variety of concerns about the Law. For one, it could tighten an already difficult hiring market by increasing the risk of businesses being outbid by competitors if their salary ceilings are made public, potentially discouraging businesses from remaining in or relocating to New York. Other concerns included the risk of salary inflation and the risk of exposing recovering businesses and nonprofit organizations to litigation and harsh penalties. The Law as amended is a compromise between the concerns of businesses and employee advocacy groups.

Employers are encouraged to review their internal policies and job postings for compliance in advance of the November 1, 2022 effective date.

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