

# NEW YORK AMENDS AND EXPANDS SCOPE OF STATEWIDE “PAY TRANSPARENCY” LAW

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As we previously reported [here](#), New York has enacted statewide “pay transparency” legislation that will take effect on September 17, 2023. On March 3, 2023, Governor Kathy Hochul signed an amendment to the legislation that clarifies the application of the law, including with respect to remote workers, and removes certain recordkeeping requirements. But the amendments also expand the extraterritorial reach of the legislation by applying it to searches for workers who will not work at all in New York, but merely have a reporting relationship to New York.

As a reminder, the pay transparency law, which is codified at Section 194-b of the New York Labor Law, will require employers with four or more employees to include the following whenever they “advertise” for a job, promotion, or transfer opportunity:

- The compensation or “range of compensation” for the job, promotion, or transfer opportunity.
- The job description for the job, promotion, or transfer opportunity, if one exists.

The original legislation did not define the term “advertise.” The amendment adds the following definition:

“[A]dvertise” shall mean to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.

This is a broad definition and will likely encompass internal postings on an intranet or job board, postings in newspapers and “want ads,” as well as electronic postings on the employer’s website or job posting sites such as Indeed.com or ZipRecruiter.

Originally, the legislation applied to any job, promotion, or transfer opportunity that “can or will be performed, at least in part, in the state of New York.” The amendment both narrows and expands this language. On one hand, the amendment removes from the law’s scope jobs that merely “can” be performed within New York, instead applying the requirements to jobs that “will physically be performed, at least in part” in New York.

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On the other hand, the amendment expands the law to apply to jobs that “will physically be performed outside of New York but report[] to a supervisor, office, or other work site in New York.” This change substantially broadens the potential scope of the law and would purport to extend its applicability to workers who may never set foot in New York, but merely have a reporting relationship to someone in New York. Moreover, it is not clear whether the reporting relationship must be a direct or first tier reporting relationship, or whether reporting to a New York-based supervisor or office anywhere up the supervisory chain will be sufficient to bring the position within the law’s purported scope.

Whether this purported extraterritorial application of New York law will withstand judicial scrutiny remains to be seen. However, as it currently stands, effective September 17, before posting any internal or external advertisements, employers will need to carefully evaluate not only where the employee will physically work but also the location of the supervisors and offices to which he or she will report.

Notably, this aspect of the amendment creates a key difference between the statewide and New York City pay transparency laws. The New York City law applies to jobs that can or will be performed in New York City. Accordingly, employers should consider, before advertising a fully remote position, whether there is a chance that they might hire a New York City applicant.

Finally, the amendment removes the requirement that employers keep and maintain records demonstrating compliance with the pay transparency law, such as “the history of compensation ranges” and job descriptions for each advertised position. Practically, however, employers should consider maintaining at least some records, such as copies of covered job postings, so that they are prepared to demonstrate their compliance with the new requirements.

The new amendment provides employers with some clarity regarding the pay transparency law’s application, but also present a host of new questions and uncertainties around extraterritorial application of the law. More developments on these issues may be forthcoming as the New York State Department of Labor is required to promulgate rules and regulations under the law. In the meantime, employers should start planning to comply with the law as of September 17, 2023. In addition, employers need to remember to comply with pay transparency laws in New York City, Westchester County, Albany County, and the City of Ithaca, as well as in other states, counties, and cities around the nation.

If you have any questions about the pay transparency law or how it may impact your business, please contact [John M. Godwin](#) (716.848.1357), [Charles H. Kaplan](#) (646.218.7513), [Kinsey A. O’Brien](#) (716.848.1287), or any other member of our [Labor & Employment Practice](#).

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