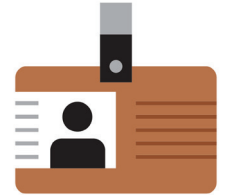




PHILLIPS LYTLE LLP CLIENT ALERT FOR BNHRA MEMBERS LABOR & EMPLOYMENT

MARCH 2023



New York State Amends Pay Transparency Law

As we previously reported, the New York State Pay Transparency Law (PTL) will take effect on September 17, 2023, requiring employers with at least four employees to disclose the salary range and job description for advertised job positions, including promotions and transfers. After the PTL was signed by New York State Governor Kathy Hochul, complaints about various aspects of the law were made. To address these concerns, the New York State Legislature passed and Governor Hochul signed into law amendments to the PTL on March 3, 2023, which will also take effect on September 17, 2023. Covered employers should be familiar with the amendments so they are prepared to comply with the PTL as amended when it takes effect.

COVERED POSITIONS

As originally enacted, the PTL stated it covered any job, promotion or transfer “that can or will be performed, at least in part, in the state of New York,” leading to the concern that the PTL would apply to any remote position performed wherever the employee resided simply because it could be filled by an applicant living in New York. To alleviate this concern, the amended statute deletes that language and replaces it with language stating that the PTL applies to postings for jobs “that will physically be performed, at least in part, in the state of New York.” Although this change might appear to remove remote positions located outside of New York from the PTL’s coverage, those hopes are dashed by the next sentence of the amendments which states that the PTL covers any position “that will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York.” Thus, any position performed anywhere

outside of New York, whether remote or not, that reports to a supervisor, office or other work site in New York will be subject to the PTL’s disclosure requirements. Accordingly, a covered employer’s reporting structure will significantly determine its disclosure obligations under the PTL for out-of-state positions.

Employers with employees in New York City should be aware that the New York City Salary Transparency Law (STL) has a different coverage standard that applies to positions that can or will be performed, at least in part, in New York City.

RECORD RETENTION OBLIGATIONS

The PTL also originally required employers to maintain records related to the history of compensation ranges and the job descriptions for each posted position. Those record retention obligations have now been removed by the amendments. Accordingly, employers no longer have a statutory duty to keep those records. However, it may be prudent for employers to do so anyway to have adequate records to defend against any possible claims for violation of the law.

ADDED DEFINITION OF “ADVERTISE”

In an apparent oversight, the PTL did not originally contain a definition of what it meant to “advertise” a job, promotion or transfer. The amendments correct this by adding that “‘advertise’ 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 removes any doubt that the PTL disclosure obligations apply to internal and external job listings.



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Our prior alerts, [New York State Enacts Pay Transparency Law](#)¹ and [New York City Salary Transparency Law Takes Effect on November 1, 2022](#),² can be viewed on our website.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■

1 <https://phillipslytle.com/publications/client-alert/new-york-state-enacts-pay-transparency-law/>

2 <https://phillipslytle.com/publications/client-alert/new-york-city-salary-transparency-law-takes-effect-on-november-1-2022/>



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