


**Transparency is Key**

*From Job Postings to Notice Requirements, How Employers Must be More Transparent Than Ever*

University at Buffalo Law Alumni Association and Graduates of the Last Decade (GOLD) Group

PRESENTED BY:  
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Albany | Buffalo | Greensboro | Hackensack | New York City | Palm Beach | Rochester | Saratoga Springs | Toronto  
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**Agenda**

- How Did We Get Here? Pay Transparency in Recent Historical Context
- Local Pay Transparency Laws in NYS
- NYS Pay Transparency Law
- NYS Electronic Monitoring Notice Requirement
- NYS Electronic Posters Requirement




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**How Did We Get Here?**

- Under Section 7 of the National Labor Relations Act, employees have, among other rights, the right to discuss wages, benefits, and other terms and conditions of employment.
  - With co-workers or with outside third parties.
  - Regardless of union status.
- New York Labor Law Section 194(4)(a): "No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee."




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**How Did We Get Here?**

- “Me Too” and “Times Up” Movements – initial focus on sexual harassment in the workplace.
- The “next phase” of these movements – pay equity.
  - Expansion of pay equity laws.
  - Salary/wage history inquiry/use bans.
  - Pay transparency laws.
- All three areas have gained traction in New York State.
- Localities have “led the way” on certain aspects.




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**How Did We Get Here?**

- Expansion of New York State’s Pay Equity Law
  - Before October 2019, Section 194 prohibited only sex-based pay differentials.
  - Effective October 8, 2019, this was expanded to prohibit pay differentials based on any protected characteristic under the New York State Human Rights Law.
  - Also reduced the burden on an employee needed to prove an unlawful pay differential.
    - Pre-October 2019, an employee needed to show that he or she performs “equal work” on a job that requires “equal skill, effort and responsibility” to that of a member of the opposite sex.
    - Now, an employee need only show that he or she is paid less than an individual outside his or her protected classification who performs “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.”




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**How Did We Get Here?**

- New York State’s Salary/Wage History Law
  - Effective January 6, 2020, Section 194-a of the Labor Law makes it unlawful for an employer to:
    - Seek, request, or require – whether verbally or in writing – wage or salary history from an applicant or current employee as a condition of being interviewed for, being considered for, or receiving employment or promotion; or
    - Rely on an applicant’s wage or salary history in determining whether to offer employment to the applicant or in determining the wages or salary to be paid to the applicant.
  - Three exceptions:
    - The law does not prevent an applicant or employee from “voluntarily, and without prompting, disclosing or verifying wage or salary history,” including for the purpose of negotiating compensation.
    - An employer may confirm wage or salary history after an offer of employment with compensation has been made, but only if the applicant or employee responds to the offer by providing prior wage or salary information to support a wage or salary higher than offered.
    - The legislation does not apply where any federal, state, or local law enacted prior to the effective date of this legislation requires the disclosure or verification of salary history information to determine an individual’s compensation.




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**NYC Pay Transparency Law**

- Part of the New York City Human Rights Law; took effect on November 1, 2022.
- Requires that employers provide “a good faith salary range for every job, promotion, and transfer opportunity advertised.”
- Covered employers:
  - All employers with four or more employees or one or more domestic workers.
  - The four employees need not work in the same location or all in NYC. As long as one of the employees works in NYC, the employer is covered.
  - Employment Agencies are covered, regardless of their size.
  - Temporary Agencies seeking applicants for a pool of workers are not covered.
    - However, employers who work with temporary help firms are covered.
- Does not apply to advertisements for jobs that cannot or will not be performed, at least in part, in New York City.




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**NYC Pay Transparency Law**  
What is an “advertisement?”

- A written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants.
- Covered listings include:
  - Postings on internal bulletin boards;
  - Internet advertisements (Indeed, LinkedIn, ZipRecruiter);
  - Printed flyers distributed at job fairs; and
  - Newspaper advertisements.
- Advertisements are covered regardless of the medium in which they are disseminated.
- The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.




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**NYC Pay Transparency Law**  
What needs to be included in the ad?

- Employers must state the minimum and maximum salary they in “good faith” believe at the time of the posting they are willing to pay for the advertised job, promotion, or transfer opportunity.
  - “Good faith” means the salary range the employer honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).
- Employers must include both a minimum and a maximum salary; the range cannot be open ended.
  - “\$15 per hour and up” or “maximum \$50,000 per year” would not be consistent with the new requirements.
- If an employer has no flexibility in the salary it is offering, the minimum and maximum salary may be identical, for example, “\$20 per hour.”




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**NYC Pay Transparency Law**  
**What needs to be included in the ad?**

- Job advertisements do not need to include other forms of compensation or benefits offered in connection with the job, such as:
  - Health, life, or other employer-provided insurance;
  - Paid or unpaid time off work, such as paid sick or vacation days, leaves of absence, or sabbaticals;
  - The availability of or contributions towards retirement or savings funds, such as 401(k) plans or employer funded pension plans;
  - Severance pay;
  - Overtime pay; and/or
  - Other forms of compensation, such as commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging.




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**NYC Pay Transparency Law**  
**Enforcement**

- Complaints of violations of the pay transparency law can be filed with the New York City Commission on Human Rights or in court.
  - If successful, the claimant can recover back pay, compensatory and punitive damages, and attorneys' fees.
  - However, the pay transparency law was amended to provide a private right of action only for current employees. This amendment seems to effectively eliminate any recourse for applicants who are not hired.
- No civil penalty will be assessed for a first violation, provided that the employer shows it has fixed the violation within 30 days of receiving the Commission's notice of the violation.
- For all other violations, employers may be subject to pay civil penalties of up to \$125,000 for uncured violations – or up to \$250,000 if the violation is found to be willful.




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**NYC Pay Transparency Law**  
**Practical Issues**

- Broad Ranges
  - The New York Post advertised a job for a tech reporter with a salary range listed from \$50,000 to \$145,000.
  - Dow Jones posted an ad on Indeed for a software development engineer with a range of \$40,000 to \$160,000 a year.
  - Citibank listed a job with a salary range of \$0 to \$2 million.
    - The financial services company has since taken down the ad, citing a "technical issue that is causing some job postings to display a system default salary range."
  - Non-Equity Partner Job Postings?
- Applicant Negotiation
  - Range is determined at the time the job advertisement is placed.
  - But, it needs to be the range the employer, in good faith, believes it is willing to pay for the position.




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### Other Local Pay Transparency Laws in NYS

- Westchester County
  - Took effect November 6, 2022.
  - Applies to employers with four or more employees (at least one of which works in Westchester County).
  - Similar to the NYC law.
  - "Shall be null and void on the day that Statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law."
- City of Ithaca
  - Took effect September 1, 2022.
  - Applies to employers with four or more employees whose "standard work location" is in Ithaca.
  - Similar to the NYC law.




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### NYS Pay Transparency Law

- New Section 194-b of the Labor Law is scheduled to take effect on September 17, 2023.
- Will require employers with four or more employees to include the following in any advertisement for "a job, promotion, or transfer opportunity that can or will be performed, at least in part," in the State of New York:
  - The compensation or "range of compensation" for the job, promotion, or transfer opportunity; and
  - The job description for the job, promotion, or transfer opportunity, if one exists.




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### NYS Pay Transparency Law

- The term "range of compensation" is defined as "the minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate" at the time of the advertisement.
  - As under the NYC law, merely posting a "starting" or "mid-point" compensation level will be insufficient to meet these requirements.
  - For positions that are paid solely on a commission basis, the law appears to be satisfied with a simple statement that compensation shall be based on commission.




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**NYS Pay Transparency Law**

- The law requires employers to maintain records of compliance, including "the history" of compensation ranges and job descriptions for each job, promotion, or transfer opportunity they have advertised.
  - The law is silent on the duration of this recordkeeping obligation.
- An employer's failure to comply with these requirements will result in mandatory civil penalties of:
  - \$1,000 for the first violation;
  - \$2,000 for the second violation; and \$3,000 for a third or subsequent violation.
- In addition, any individual who believes they have been aggrieved by a violation of the law may seek remedies by filing a complaint with the New York State Department of Labor.



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**NYS Pay Transparency Law**

- The law does not:
  - Define what constitutes an "advertisement" for a job, promotion, or transfer opportunity; and
  - State to what the extent bonus compensation must be identified in covered advertisements.
- When signing the legislation, Governor Hochul issued an "Approval Memorandum," which states "this legislation need[s] several fixes to ensure effective implementation" and that, therefore, Governor Hochul has "secured an agreement with the Legislature to make technical changes" to the law.
- According to the Approval Memorandum, these technical changes will:
  - "[C]larify job advertising in the law."
  - "[E]xclude remote job opportunities performed entirely outside of the State without a connection to a New York office or supervisor."
  - "[E]liminate the previous record maintenance requirement for businesses."
- In addition, the New York State Department of Labor is required to issue rules and regulations under the law.



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**Electronic Monitoring Notice**

- Section 52-c of the New York Civil Rights Law took effect on May 7, 2022.
- Requires all private-sector employers, regardless of size, with "a place of business in" New York State to notify employees of their electronic monitoring practices.
- Specifically, employers must provide "prior written notice upon hiring," which "shall be in writing, in an electronic record, or in another electronic form," if the employer engages in monitoring or intercepting employees' telephone, email, and internet access usage.
- Employees must acknowledge the notice in writing or electronically.
- Employers must also post the notice of electronic monitoring in a conspicuous location which is easily visible to all employees who are subject to the electronic monitoring.



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## Electronic Monitoring Notice

- The law does not apply to processes that are:
  - Designed to manage the type or volume of incoming or outgoing email, voicemail, or internet usage;
  - Not targeted to monitor or intercept electronic activities of a particular individual; and
  - Performed solely for computer system maintenance and/or protection.
- The law does not prohibit management from monitoring employees' electronic communications. An employer retains the right to monitor employees' telephone, computer, and internet access and usage, so long as the employer informs the employees of such electronic monitoring.
- The New York State Attorney General has exclusive authority to enforce this new law.
  - Employers who are found to be in violation of the law will be subject to a maximum civil penalty of \$500 for the first offense, \$1,000 for the second offense, and \$3,000 for the third and each subsequent offense.
  - Employees will not have a private right of action to commence a lawsuit under the new statute.




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## Electronic Posters Requirement

- Effective December 26, 2022, Section 201 of the New York Labor Law requires employers to make all mandatory workplace postings available to employees electronically.
  - Previously, Section 201 required employers to post hard copies of New York State Department of Labor notices and posters in conspicuous places at the worksite.
  - The amendment added language requiring all such postings – as well as any other "document[s] required to be physically posted at a worksite pursuant to state or federal law or regulation" – also be provided to employees electronically.
- Specifically, employers must provide these postings "through the employer's website or by email."
- Employers are also required to provide notice to employees "that documents required for physical posting are also available electronically."




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## Questions?

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# Salary Transparency in Job Advertisements

**Starting November 1, 2022, employers advertising jobs in New York City must include a good faith salary range for every job, promotion, and transfer opportunity advertised.**

The New York City Commission on Human Rights is a resource to help workers and employers understand their rights and obligations under the New York City Human Rights Law (NYCHRL). This document provides information regarding the salary transparency provisions of the NYCHRL, enacted on January 15, 2022, and amended on May 12, 2022.

## Does this new law apply to my job postings?

All employers that have four or more employees or one or more domestic workers are covered by the NYCHRL, including this new provision of the law. As with other provisions of the NYCHRL, owners and individual employers count towards the four employees. The four employees do not need to work in the same location, and they do not need to all work in New York City. As long as one of the employees works in New York City, the workplace is covered.

Employment Agencies are also covered by the new law, regardless of their size. As such, employment agencies must ensure that any job listings they promote or seek to fill comply with the new salary transparency requirements.

Temporary Help Firm Exception: The new law does not apply to temporary help firms seeking applicants to join their pool of available workers. Temporary help firms are businesses that recruit, hire, and assign their own employees to perform work or services for other organizations, to support or supplement the other organization's workforce, or to provide assistance in special work situations. However, employers who work with temporary help firms must follow the new salary transparency law.

## Which job listings are covered by the new law?

Any advertisement for a job, promotion, or transfer opportunity that would be performed in New York City is covered by the new law. An "advertisement" is a written description of an available job, promotion, or transfer opportunity that is publicized to a pool of potential applicants. Such advertisements are covered regardless of the medium in which they are disseminated. Covered listings include postings on internal bulletin boards, internet advertisements, printed flyers distributed at job fairs, and newspaper advertisements. The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.

Covered employers should follow the new law when advertising for 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. Because the NYCHRL's protections extend to many groups of workers, postings are covered regardless of whether they are seeking full- or part-time employees, interns, domestic workers, independent contractors, or any other category of worker protected by the NYCHRL.

## What information must be included in covered job advertisements?

Employers must state the minimum and maximum salary they in good faith believe at the time of the posting they are willing to pay for the advertised job, promotion, or transfer opportunity. "Good faith" means the salary range the employer honestly believes at the time they are listing the job advertisement that they are willing to pay the successful applicant(s).

Employers must include both a minimum and a maximum salary; the range cannot be open ended. For example, "\$15 per hour and up" or "maximum \$50,000 per year" would not be consistent with the new requirements. If an employer has no flexibility in the salary they are offering, the minimum and maximum salary may be identical, for example, "\$20 per hour." Advertisements that cover multiple jobs, promotions, or transfer opportunities can include salary ranges that are specific to each opportunity.



Salary includes the base annual or hourly wage or rate of pay, regardless of the frequency of payment. For example, it would include an hourly wage of \$15 per hour or an annual salary of \$50,000 per year.

Salary does not include other forms of compensation or benefits offered in connection with the advertised job, promotion, or transfer opportunity, such as:

- Health, life, or other employer-provided insurance
- Paid or unpaid time off work, such as paid sick or vacation days, leaves of absence, or sabbaticals
- The availability of or contributions towards retirement or savings funds, such as 401(k) plans or employer-funded pension plans
- Severance pay
- Overtime pay
- Other forms of compensation, such as commissions, tips, bonuses, stock, or the value of employer-provided meals or lodging

Employers may include additional information in advertisements about frequency of pay, benefits and other forms of compensation offered in connection with the job, promotion, or transfer opportunity, even though that information is not required.

### **How will salary transparency protections be enforced?**

The Commission on Human Rights accepts and investigates complaints of discrimination filed by members of the public, including complaints alleging violations of the new salary transparency protection. The Law Enforcement Bureau also initiates its own investigations based on testing, tips, and other sources of information. In addition to filing complaints at the Commission, individuals with claims against their current employer can also file a lawsuit in civil court.

Employers and employment agencies who are found to have violated the NYCHRL may have to pay monetary damages to affected employees, amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief. The Commission will not assess a civil penalty for a first complaint alleging a violation of the salary transparency provision, provided that the employer shows they have fixed the violation within 30 days of receiving the Commission's notice of the violation. Covered employers may have to pay civil penalties of up to \$250,000 for a uncured first violation of the new law, as well as for any subsequent violations. Information regarding the process for submitting proof of a fixed violation and appealing a civil penalty for a violation of the new salary transparency protection is available on the Commission's website.

### **What should I do if I have questions about these rights and obligations or would like to report discrimination?**

Call the Commission on Human Rights at (212) 416-0197 or visit [NYC.gov/HumanRights](https://nyc.gov/HumanRights). You can file a complaint, leave an anonymous tip, learn more about your rights and responsibilities, or sign up for a free workshop.

# STATE OF NEW YORK

9427--A

## IN SENATE

May 26, 2022

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to requiring employers to disclose compensation or range of compensation to applicants and employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 194-b to  
2 read as follows:

3 § 194-b. Mandatory disclosure of compensation or range of compen-  
4 sation. 1. a. No employer, employment agency, employee, or agent there-  
5 of shall advertise a job, promotion, or transfer opportunity that can or  
6 will be performed, at least in part, in the state of New York, without  
7 disclosing the following:

8 (i) the compensation or a range of compensation for such job,  
9 promotion, or transfer opportunity; and

10 (ii) the job description for such job, promotion, or transfer opportu-  
11 nity, if such description exists.

12 b. Advertisements for jobs, promotions, or transfer opportunities paid  
13 solely on commission shall maintain compliance with subparagraph (i) of  
14 paragraph a of this subdivision by disclosing in writing in a general  
15 statement that compensation shall be based on commission.

16 2. No employer shall refuse to interview, hire, promote, employ or  
17 otherwise retaliate against an applicant or current employee for exer-  
18 cising any rights under this section.

19 3. The commissioner shall promulgate rules and regulations to effectu-  
20 ate the provisions of this section.

21 4. The department shall conduct a public awareness outreach campaign,  
22 which shall include making information available on its website and  
23 otherwise informing employers of the provisions of this section.

24 5. a. Any person claiming to be aggrieved by a violation of this  
25 section may file with the commissioner a complaint regarding such

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD15971-02-2

1 alleged violation for an investigation of such complaint and statement  
2 setting the appropriate remedy, if any, pursuant to the provisions of  
3 section one hundred ninety-six-a of this article.

4 b. An employer who fails to comply with any requirement of this  
5 section or any regulation published thereunder shall be deemed in  
6 violation of this section and shall be subject to a civil penalty in  
7 accordance with section two hundred eighteen of this chapter.

8 6. An employer shall keep and maintain necessary records to comply  
9 with the requirements of this section including, but not limited to, the  
10 history of compensation ranges for each job, promotion, or transfer  
11 opportunity and the job descriptions for such positions, if such  
12 descriptions exist.

13 7. For the purposes of this section the following terms shall have the  
14 following meanings:

15 a. "range of compensation" shall mean the minimum and maximum annual  
16 salary or hourly range of compensation for a job, promotion, or transfer  
17 opportunity that the employer in good faith believes to be accurate at  
18 the time of the posting of an advertisement for such opportunity.

19 b. "employer" shall mean:

20 (i) any person, corporation, limited liability company, association,  
21 labor organization or entity employing four or more employees in any  
22 occupation, industry, trade, business or service, or any agent thereof;  
23 and

24 (ii) any person, corporation, limited liability company, association  
25 or entity acting as an employment agent or recruiter, or otherwise  
26 connecting applicants with employers, provided that "employer" shall not  
27 include a temporary help firm as such term is defined by subdivision  
28 five of section nine hundred sixteen of this chapter.

29 8. The provisions of this section shall not be construed or interpret-  
30 ed to supersede or preempt any provisions of local law, rules, or regu-  
31 lations.

32 § 2. This act shall take effect on the two hundred seventieth day  
33 after it shall have become a law.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Labor Law (Refs & Annos)  
Chapter 31. Of the Consolidated Laws (Refs & Annos)  
Article 7. General Provisions

McKinney's Labor Law § 201

§ 201. Laws and orders to be posted

Effective: December 16, 2022

[Currentness](#)

Wherever persons are employed who are affected by the provisions of this chapter or of the industrial code, the commissioner shall furnish to the employer copies or abstracts of such provisions, rules and orders as he may deem necessary affecting such persons. The copies or abstracts shall be in such language as the commissioner may require and shall be kept posted by the employer in a conspicuous place on each floor of the premises. Digital versions of such copies and abstracts shall also be made available through the employer's website or by email. Employers shall provide notice that documents required for physical posting are also available electronically. All other documents required to be physically posted at a worksite pursuant to state or federal law or regulation shall also be made electronically available in the manner described pursuant to this section.

**Credits**

(L.1921, c. 50. Amended L.1934, c. 166; L.1946, c. 457, § 1; L.2022, c. 693, § 1, eff. Dec. 16, 2022.)

McKinney's Labor Law § 201, NY LABOR § 201

Current through L.2022, chapters 1 to 841. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated  
Labor Law (Refs & Annos)  
Chapter 31. Of the Consolidated Laws (Refs & Annos)  
Article 6. Payment of Wages (Refs & Annos)

McKinney's Labor Law § 194-a

§ 194-a. Wage or salary history inquiries prohibited

Effective: January 6, 2020

[Currentness](#)

1. No employer shall:

a. rely on the wage or salary history of an applicant in determining whether to offer employment to such individual or in determining the wages or salary for such individual.

b. orally or in writing seek, request, or require the wage or salary history from an applicant or current employee as a condition to be interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion.

c. orally or in writing seek, request, or require the wage or salary history of an applicant or current employee from a current or former employer, current or former employee, or agent of the applicant or current employee's current or former employer, except as provided in subdivision three of this section.

d. refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee based upon prior wage or salary history.

e. refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee because such applicant or current employee did not provide wage or salary history in accordance with this section.

f. refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current or former employee because the applicant or current or former employee filed a complaint with the department alleging a violation of this section.

2. Nothing in this section shall prevent an applicant or current employee from voluntarily, and without prompting, disclosing or verifying wage or salary history, including but not limited to for the purposes of negotiating wages or salary.

3. An employer may confirm wage or salary history only if at the time an offer of employment with compensation is made, the applicant or current employee responds to the offer by providing prior wage or salary information to support a wage or salary higher than offered by the employer.

4. For the purposes of this section, “employer” shall include but not be limited to any person, corporation, limited liability company, association, labor organization, or entity employing any individual in any occupation, industry, trade, business or service, or any agent thereof. For the purposes of this section, the term “employer” shall also include the state, any political subdivision thereof, any public authority or any other governmental entity or instrumentality thereof, and any person, corporation, limited liability company, association or entity acting as an employment agent, recruiter, or otherwise connecting applicants with employers.

5. An applicant or current or former employee aggrieved by a violation of this section may bring a civil action for compensation for any damages sustained as a result of such violation on behalf of such applicant, employee, or other persons similarly situated in any court of competent jurisdiction. The court may award injunctive relief as well as reasonable attorneys' fees to a plaintiff who prevails in a civil action brought under this paragraph.

6. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any applicant or current or former employee under any other law or regulation or under any collective bargaining agreement or employment contract.

7. This section shall not supersede any federal, state or local law enacted prior to the effective date of this section that requires the disclosure or verification of salary history information to determine an employee's compensation.


8. The department shall conduct a public awareness outreach campaign, which shall include making information available on its website, and otherwise informing employers of the provisions of this section.

#### **Credits**

(Added L.2019, c. 94, § 1, eff. Jan. 6, 2020.)

McKinney's Labor Law § 194-a, NY LABOR § 194-a

Current through L.2022, chapters 1 to 841. Some statute sections may be more current, see credits for details.

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Labor Law (Refs & Annos)  
Chapter 31. Of the Consolidated Laws (Refs & Annos)  
Article 6. Payment of Wages (Refs & Annos)

McKinney's Labor Law § 194

§ 194. Differential in rate of pay because of protected class status prohibited

Effective: October 8, 2019

[Currentness](#)

1. No employee with status within one or more protected class or classes shall be paid a wage at a rate less than the rate at which an employee without status within the same protected class or classes in the same establishment is paid for: (a) equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, or (b) substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions; except where payment is made pursuant to a differential based on:

(i) a seniority system;

(ii) a merit system;

(iii) a system which measures earnings by quantity or quality of production; or

(iv) a bona fide factor other than status within one or more protected class or classes, such as education, training, or experience. Such factor: (A) shall not be based upon or derived from a differential in compensation based on status within one or more protected class or classes and (B) shall be job-related with respect to the position in question and shall be consistent with business necessity. Such exception under this paragraph shall not apply when the employee demonstrates (1) that an employer uses a particular employment practice that causes a disparate impact on the basis of status within one or more protected class or classes, (2) that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and (3) that the employer has refused to adopt such alternative practice.

2. For the purpose of subdivision one of this section: (a) “business necessity” shall be defined as a factor that bears a manifest relationship to the employment in question, and (b) “protected class” shall include age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, and any employee protected from discrimination pursuant to [paragraphs \(a\), \(b\), and \(c\) of subdivision one of section two hundred ninety-six](#) and any intern protected from discrimination pursuant to [section two hundred ninety-six-c of the executive law](#).

3. For the purposes of subdivision one of this section, employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same geographical region, no larger than a county, taking into account population distribution, economic activity, and/or the presence of municipalities.

4. (a) No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee.

(b) An employer may, in a written policy provided to all employees, establish reasonable workplace and workday limitations on the time, place and manner for inquires about, discussion of, or the disclosure of wages. Such limitations shall be consistent with standards promulgated by the commissioner and shall be consistent with all other state and federal laws. Such limitations may include prohibiting an employee from discussing or disclosing the wages of another employee without such employee's prior permission.

(c) Nothing in this subdivision shall require an employee to disclose his or her wages. The failure of an employee to adhere to such reasonable limitations in such written policy shall be an affirmative defense to any claims made against an employer under this subdivision, provided that any adverse employment action taken by the employer was for failure to adhere to such reasonable limitations and not for mere inquiry, discussion or disclosure of wages in accordance with such reasonable limitations in such written policy.

(d) This prohibition shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee's essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge, or in furtherance of an investigation, proceeding, hearing, or action under this chapter, including an investigation conducted by the employer.

(e) Nothing in this section shall be construed to limit the rights of an employee provided under any other provision of law or collective bargaining agreement.

#### **Credits**

(Added L.1966, c. 548, § 2. Amended L.1980, c. 328, § 1; L.2015, c. 362, § 1, eff. Jan. 19, 2016; L.2019, c. 93, § 1, eff. Oct. 8, 2019.)

#### [Notes of Decisions \(32\)](#)

McKinney's Labor Law § 194, NY LABOR § 194

Current through L.2022, chapters 1 to 841. Some statute sections may be more current, see credits for details.