

# Client Alert **Employment and Labor**

## **The Evolving New York City Workplace: Two Important Updates Effective November 1st**

Two important measures impacting New York City employers will be effective on November 1, 2022. The first measure is Mayor Adams' lifting of the COVID-19 vaccine requirement for private employers, which was implemented by his predecessor Mayor de Blasio shortly before he left office. The second measure is New York City's new "pay transparency" law, which continues the city's aggressive efforts to eradicate pay disparity and requires employers to immediately review and update their hiring practices.

### **Vaccine Mandate Lifted**

The New York City COVID-19 vaccine mandate, which became effective on December 27, 2021, mandated all New York City private employers to require that all in-person employees be vaccinated against COVID-19, subject only to approved religious and medical exemptions. Effective November 1, 2022, this vaccine mandate will be lifted.

Going forward, New York City employers retain the right to implement their own vaccination policies. New York City employers *may* lift the requirement and allow employees who are not vaccinated to return to work on site. Alternately, employers *may* continue to require the COVID-19 vaccine for in-person staff, in which case such employer mandatory vaccination policies must still provide for medical or religious exemptions consistent with applicable laws.

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### Pay Transparency

Following a recent national trend, New York City continues to aggressively regulate pay equity by amending the New York City Human Rights Law (“NYCHRL”) to implement “pay transparency” requirements. The law also contains an anti-retaliation provision. The New York City pay transparency law applies to employers with four or more employees (or one or more domestic workers) and employment agencies of any size. The new law does not apply to temporary help firms seeking applicants to join their pool of available workers.

Going forward, covered entities must include the minimum and maximum annual base salary or hourly range of compensation that the employer believes in good faith to be accurate at the time in any advertisement for a job, promotion or transfer opportunity that can or will be performed, in whole or part, in New York City. While the statutory language is sparse, and regulations have not yet been issued, according to a Fact Sheet published by the New York City Commission on Human Rights (“Commission”) (<https://f.datasrvr.com/fr1/622/87383/Salary-Transparency-Factsheet.pdf?cbcachex=166718>), an “advertisement” is defined broadly as a written description of an available job, promotion or transfer opportunity that is publicized to a pool of potential applicants, regardless of the medium, and includes postings on internal bulletin boards, internet advertisements, printed flyers at job fairs and newspaper advertisements. The requirement applies when advertising for full-time or part-time employees, interns, domestic workers or independent contractors. The law does not prohibit employers from hiring without using an advertisement or require employers to create an advertisement in order to hire.

According to the Fact Sheet, employers must include both a minimum and maximum salary, and the salary range cannot be open-ended. However, note that “salary” does not include other forms of compensation or benefits offered, including overtime, commissions, tips, bonuses or stock. For example, “\$15 per hour and up” or “maximum \$50,000 per year” would not be consistent with the new New York City requirements. Further, an advertisement that solely provides that a salary will be commensurate “with experience” also would appear to be inconsistent with the new law.

The Commission investigates complaints of discrimination, as well as the new salary transparency protections. 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. According to the Fact Sheet, the Commission will not assess a civil penalty for the first complaint alleging violation of the salary transparency provision, provided that the employer shows that it has fixed the violation within 30 days.

Notably, New York State lawmakers have also passed a similar pay transparency bill, which is currently pending Governor Hochul's signature and would go into effect 270 days after it is signed into law. The New York State bill, if it is enacted in its current form, will be potentially broader in its application, such as requiring provision of a job description for the position, if one exists.

It is also important to note that prior recent measures adopted by New York State and/or New York City to ensure non-discriminatory hiring practices and equal employment opportunities include regulations prohibiting employers from asking candidates about their prior salary history, pay equity provisions requiring equal pay for the same or substantially similar work, and stringent limitations on criminal history inquiries.

### Takeaways

New York City continues to be at the forefront of enacting employment legislation to protect the rights of employees and applicants. It is critical for New York City employers to be vigilant to ensure compliance with the ever-changing legal requirements, including those relating to COVID-19, and to implement appropriate policies and practices.

With regard to the new pay transparency law, it is important for employers to promptly assess their pay practices, ensure that pay ranges are appropriate and equitable, consider documenting the applicable factors that were considered in reaching the salary decision, review job descriptions and ensure that advertising complies with the new requirements (including online recruitment sites).

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Our Sills Cummis Employment and Labor Practice Group attorneys are available to advise on these evolving issues.

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