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An Overview of New Jersey's New Pay Transparency Legislation for Employers

Thomas C. Senter

Greenbaum, Rowe, Smith & Davis LLP Client Alert

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What You Need to Know

- On November 18, 2024, New Jersey Governor Phil Murphy signed into law new pay transparency requirements which will take effect on June 1, 2025.
- The new law applies to both promotional opportunities and employment listings. It covers businesses with 10 or more employees over at least 20 calendar weeks who do business or employ people within New Jersey or take employment applications within the state.
- Employers who are subject to the new law should proactively begin preparing for compliance in order to avoid violations and related financial penalties.

On November 18, 2024, New Jersey Governor Phil Murphy signed into law new pay transparency requirements. The legislation, which makes New Jersey the latest state to embrace pay transparency by requiring employers to include the range of the hourly wage or salary in postings for new jobs or transfer opportunities, will take effect on June 1, 2025.

Definition of Employers

The new legislation, S2310, defines an employer as “any person, company, corporation, firm, labor organization, or association which has 10 or more employees over 20 calendar weeks” and:

- Conducts business in New Jersey;
- Employs individuals within New Jersey; or
- Takes applications for employment within New Jersey.

Attorneys

Thomas C. Senter

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The new law applies to both public and private employers, including governmental entities, as well as non-profit organizations. Job placement and referral agencies and other employment agencies, as well as multi-state employers with employees in New Jersey, are also covered under the legislation.

Requirements for Employers

The law requires pay transparency in employment listings and opportunities for promotion. Specifically, an employer that advertises a promotion, new position, or transfer opportunity – either internally or externally – must disclose the hourly pay rate or salary (or the range it would consider) for that position. The employer must also disclose generally the benefits or other compensation programs an applicant would be eligible to receive during their first 12 months in the position.

If an advertised position or promotion could be available to an existing employee, the employer must make “reasonable efforts” to make the opportunity known to current employees who might be eligible for it. However, such efforts are not required in the case of a decision to promote someone on an emergent basis due to an unforeseen event.

Under the legislation, employers will retain the ability to increase, beyond what was previously advertised, the salary, benefits, and compensation package when making an offer of employment.

Penalties for Violations

The New Jersey Commissioner of Labor and Workforce Development has enforcement authority over the new law. Violators will be subject to a fine of up to \$300 for an initial violation and up to \$600 for subsequent violations. It should be noted that if an employer errs when listing the same employment opportunity in multiple forums, that error will be considered only a single violation.

While these fines are not necessarily significant, it is important to consider that an employer’s failure to comply with the new disclosure requirements might be interpreted as engaging in discriminatory employment practices for which the resultant costs could be substantial.

Guidance for New Jersey Employers

In preparation for the new pay transparency legislation’s effective date of June 1, 2025, it is prudent for employers to take the following steps:

- Document pay ranges and benefit entitlements for certain positions as this information will be needed to satisfy the new disclosure requirements.
- Consider a pay equity audit to uncover any potential state or federal compliance issues. The importance of this is magnified by the broad-based equal pay protections under New Jersey’s Diane B. Allen Equal Pay Act.
- As the new law applies to job postings and other advertisements, the time is right for employers to review their existing work force and take steps to ensure that its current pay and benefits structure are

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within the pay ranges that will be included in future postings. This will help identify and correct existing unintended pay disparities in violation of the New Jersey Law Against Discrimination or federal law.

- Review the classification of workers within the context of the new law. An employer that misclassifies certain common law employees as independent contractors who are paid on a Form 1099 basis could learn that they are subject to (and in violation of) the new law if certain workers are reclassified as employees.
- Ascertain that relevant external service providers, such as job placement agencies, are taking appropriate steps to comply with the new law's requirements.
- Ensure that recruitment and human resources team members receive appropriate guidance and compliance training in a timely manner.
- Finally, consider that the new law does not supersede more restrictive pay disparity rules that may already apply to an employer. For example, the Jersey City Pay Transparency Law applies to employers that have 5 or more workers (employees and independent contractors) and imposes greater restrictions and penalties than the new legislation. Additionally, a New Jersey employer with workers in other states (or which advertises for workers in other states) may already be subject to posting and advertising requirements under pay transparency rules in those locations.

Conclusion

Admittedly, it can be challenging to be an employer in New Jersey and worry about compliance with each new piece of employment legislation. Forward thinking employers, however, can use the changing legal landscape to their advantage.

By openly communicating to employees the steps they are taking to comply with the new pay transparency law's requirements, employers have an opportunity to demonstrate to employees that they are being treated fairly, and that any existing pay disparities are based on appropriate business criteria applied in a uniform manner. This message can engender trust and loyalty and can position an employer as an "employer of choice."

Please contact the author of this Alert with any questions concerning the new pay transparency legislation, or to discuss your particular business circumstances.

Thomas C. Senter

Co-Chair, Employment Law Department

Chair, Employee Benefits & Executive Compensation Practice Group

tsenter@greenbaumlaw.com

732.476.2650