New Laws Impacting Hiring and Promoting in New York City

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New York City Pay Transparency Act

New York City is following suit and joining other jurisdictions in the trend to create pay transparency. The new pay transparency law (New York City Pay Transparency Act or the law) amends the New York City Human Rights Law making it unlawful for an employer to advertise a job, promotion, or transfer without including salary ranges (minimum and maximum).

Effective May 15, 2022, the law requires employers with at least four employees located in New York City and independent contractors to post the lowest and highest salary that the employer believes it would pay in "good faith" at the time of posting for the advertised job, promotion or transfer. Notably, the law does not apply to temporary positions advertised by temporary staffing agencies.

The New York City Commission on Human Rights (Commission) may impose a civil penalty of up to $125,000 per violation if the Commission finds that the employer engages in an unlawfully discriminatory practice in violation of the law. If the unlawful discriminatory practice is found to be a "willful, wanton, or malicious act," on the part of the employer, the Commission may impose penalties of up to $250,000.

All employers located in New York City or who have employees located in New York City should prepare to comply with the amendment and be on the lookout for guidance from the Commission on compliance. Alicia McCauley, Press Secretary for the Commission, has advised that the Commission will engage in outreach likely starting around April, on the intricacies of the law. That includes providing an FAQ document, a one-page explanation of specifics, and suggested outreach for employers. This guidance will be crucial to compliance because the law currently does not define the term "advertise" and does not differentiate between internally posted versus externally posted jobs. Moreover, the law does not define a "salary" or provide any clarification on the requirements for non-salaried positions.

Artificial Intelligence

Effective January 1, 2023, New York City enacted Int. 1894-2020A (the bill) restricting the use of artificial intelligence in employment decisions. The bill prohibits the use of "automated employment decision tools" to screen candidates or employees. "Automated employment decision tools" are defined as "any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons."

Despite this bill, any employment tool which has been subject to a "bias audit" no more than a year prior to its use may still be used. The term "bias audit" means "an impartial evaluation by an independent auditor" that tests the tool's disparate impact on individuals based on race, ethnicity, and sex. A summary of the results of the most recent bias audit of such tool, as well as the distribution date of the tool must be made publicly available on the website of the employer at least ten business days prior to the use of such tool. Moreover, any employer that does use such a tool to screen an employee or a candidate, shall notify each employee or candidate of its use and the job qualifications and characteristics that the tool will use in its assessment. This notice requirement must also occur at

least ten business days prior. The bill then gives candidates the right to request an alternative selection process or accommodation.

Employers who fail to comply with the bill's requirements could face first time fines of $500 and up to $1,500 for subseuent violations.

If you have questions or would like additional information, please contact Jim Anelli (anellij@whiteandwilliams.com; 201.368.7224) or any other member of the Labor and Employment Practice Group.