



Episode 42: “Update on ‘Can I Ask That: New York Wage Transparency Laws’”

Speakers: Ari Kwiatkowski, Barclay Damon

[Ari Kwiatkowski]: Hi, everyone, this is a *Barclay Damon Live* broadcast where we discuss all things L&E, labor and employment. I’m Ari. Let’s dig in.

[Ari]: Hey, guys. Welcome to “Can I Ask That: New York Wage Transparency Laws?” We are taking a quick, short break from our discrimination-related segment and just giving you an update on New York wage transparency laws. So not exactly a question. Obviously, you guys know from listening that our “Can I Ask That” segment really dealt with what questions you can and can’t ask in terms of job postings, job interviews, job applications. But I wanted to do this quick episode because this really falls under that umbrella, because these laws have to do directly with what you must, as employers, post in your job postings and whether they’re internal for promotions. We’ll talk about that in a few minutes. But I’m kicking off this solo episode as I always do. I am going to hit you guys with a fun or interesting fact about me.

[Ari]: As you guys know, Halloween was a few days ago. My husband and I went to a Halloween party over the weekend, and we dressed up as Paul Hollywood and Prue Leith from “Great British Bake Off.” If you know, you know, and if you know, then you’re part of the elite. So that’s my fun or interesting fact for today.

[Ari]: But let’s dive quickly into wage transparency law, guys. So if you’re listening to this and you’re in New York, you probably heard something about it. What are wage transparency laws? Basically, like the name says, a wage transparency law is a law enacted which requires employers to post wages for a particular position. And we’ll get into some specifics because, you know, as of the as of today’s date, New York City had its own wage transparency law going into effect November 1, so just a couple of days ago, we’ll definitely talk about that. And if you’re an employer or an employee in New York, you probably know that New York State is set to also enact a statewide wage transparency law. So generally, wage transparency laws require that employers tell applicants or existing employees a salary range for any particular position that may be open. So let’s talk a little bit about where we are in terms of the status of these laws throughout the state, as I just mentioned. New York City’s law went into effect a couple of days ago. I know the city of Utica has a wage transparency law. I know that other upstate cities throughout the state were thinking about enacting such laws. And as I mentioned as well, a couple of moments ago, New York State is actually also likely to enact a law, a wage transparency law amending the labor law actually passed the legislature, and all signs indicate that once it is put in front of Governor Hochul, she will sign that bill into law. So that’s where we’re at. You know, New York City, if you’re in the city, our friends in the city, you kind of you guys always kind of have your own thing going on. You have the New York City Commission on Human Rights. It’s in effect. And like I said, I think New York State will pass a statewide law.

[Ari]: So, guys, let’s talk a little bit about the motivation for enacting, these types of laws. If we take a look at the bill memorandum for the law that is pending in New York State, the legislature has identified specifically a justification for why the law should be enacted in New York, which basically says, “despite progress in countering pay inequity, unacceptable pay gaps persist, particularly for women, people of color, people with disabilities and LGBTQ+ workers across the state. And according to the legislature, “pay secrecy remains a key contributing factor and persists, particularly for women, people of color, people with disabilities, LGBTQ+ workers,” you know, historically underrepresented groups in essentially municipalities, cities. The state is

looking to correct that through the use of wage transparency laws. So with that in mind, let's talk a little bit about the specifics of each of these laws.

[Ari]: So the New York City law, which again is in effect is similar, the text of it is similar to what has been proposed by the legislature throughout New York State. So just to let you guys know, the wage transparency laws apply to employers that have four or more employees. Whether or not you are in New York City or whether or not you may be subject to the eventual statewide law that's being enacted, so to be covered, you must have at least four employees. And basically, the law requires that you post a minimum and maximum salary range for a particular position, whether that's a new position or an internal transfer. Under the state law, you have to post the range or the actual compensation itself and also a job description, if you have one, for each of the proposed positions or vacant positions. So the long and short of it is you got to post the range. The New York City Commission on Human Rights has come out with some guidance. That's helpful. I think if you're in New York and you're subject to this law now, basically the New York City Commission on Human Rights has said, you know, if it's any advertisement for a job promotion or transfer that would be performed in New York, it's covered by the law.

[Ari]: There's also some good information in this guidance, which is available on the commission's website, which basically says you cannot say "up to \$50,000," "up to \$75,000" in the job posting or what you need to do is actually specify a specific minimum and maximum amount in terms of the range of the salary. So I think that's helpful. I think New York State, once it enacts the law and eventually comes out with some guidance, probably will follow that. And that's basically the long and short of these laws. Guys, also, I wanted to point out under the New York State law, postings for an opportunity paid solely on a commission basis—so if you're an employer who hires commission employees or you're an applicant or prospective applicant and you are used to or are looking for a position that you're paid commission for, for those types of positions, basically saying that... a general statement that the compensation will be based on commission is sufficient. So if you are in a business or industry where you have a lot of commission employees, you do not have to put a specific salary or age for those employees. So guys, I think that sums it up, at least the substance of these particular laws. And again, stay tuned on the status of it as it relates to the New York State law.

[Ari]: But if you're listening and you're an employer in New York state, you're probably wondering, what can you do to be ready for this or what can you do to prepare? If you're in New York, what should you do now that the New York City wage transparency law has gone into effect? So if you're an employer and you actually have a policy that calls for setting a particular salary for a job, you want to take a look at that salary, excuse me, that policy, and make sure that it makes sense. If you don't have policies, you know, talking about or setting parameters for determining salary for positions, that's something you might want to consider. You know, obviously the low hanging fruit or maybe the most obvious thing that you should do is you have to take a look at all of your postings and determine whether or not you list a salary range. And if you don't, in order to come into compliance, if in New York City, you must do that, and list salary range. So those are a couple of things. You know, if I were an employer, depending on the scope and size of your workforce, you may want to perform some sort of audit of the jobs that you have and the job descriptions. As I mentioned, under the state law, the state wage transparency law, if you have a job description for a particular job, you are supposed to post that as well.

[Ari]: So I think it's really important to take a look at your job descriptions, take a look at your internal policies and make sure that they're up to date and they make sense. You know, and most importantly, I think this is going to be really interesting in terms of the labor market right now and how things stand, because obviously a lot of employers are hiring for remote positions. And if you're hiring for a position that's in Buffalo as opposed to a position that's in New York City, you know, there may be a salary differential for those positions just given the market. So I think employers have to take a hard look at it. Be careful if a job description truly calls for a position in New York City. I think that description should be specific in that regard. And I think that, you know, this is a very interesting topic. Obviously, we'll definitely keep you informed.

[Ari]: And I'm also curious to see if these types of laws will be helpful in accomplishing the goal set out in enacting them, namely correcting the pay disparity issues that seem to persist throughout the state. So in

any event, guys, thanks so much for listening. I wanted to hop on here, like I said, and just do a brief, quick update on wage transparency laws. If you have any comments, if you have any questions, connect with me on LinkedIn, shoot me an email. I definitely want to hear from you. Next week I will be back with Barclay Damon partner, Michael Murphy. Mike is in our Albany office and he's going to talk to us about handling discrimination lawsuits in state court. So definitely tune in. You don't want to miss it. So you guys next week.

[Ari]: The *Labor & Employment* Podcast is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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