

CLIENT ALERT

NYDOL Issues New Regulations on Workplace Discussion of Employee Wages

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The New York Department of Labor (NYDOL) has adopted new regulations relating to an employer's right to limit employees' discussion of wages. The new regulations, which add Part 194, "Pay Equity," to Title 12 of the New York Codes, Rules and Regulations, were published in the New York Register February 1, 2017, and took immediate effect. The New York regulations follow the growing national trend of legislation regarding pay transparency and pay inquiries. See our prior client briefings [Equal Pay Legislation Trends: Banning Inquiry into Pay History](#) and [Philadelphia Enacts Ordinance Banning Pay History Inquiry](#).

New York Labor Law Section 194, as amended, provides that employers cannot prohibit an employee from inquiring about, discussing, or disclosing his or her own wages or the wages of a co-worker. The law, however, does allow an employer to establish, through a written policy provided to all employees, *reasonable* workplace and workday limitations on the time, place, and manner for inquiries about, discussion of, or the disclosure of wages. The regulations provide that "such limitations must be justified without reference to the content of the regulated speech, narrowly tailored to serve a significant interest, and leave open ample alternative channels for the communication of information." Critically, restrictions may not unreasonably or effectively preclude or prevent inquiry, discussion, or disclosure of wages at the worksite and/or during work hours, directly or in practice.

With respect to dissemination of an employer's policy, the rule permits employers to provide the policy either through paper copy or electronic posting. Employers are required to maintain copies of written policies during the period of applicability and for six years after such period.

There are three notable exceptions in the regulations. First, the law expressly allows employers to prohibit employees from discussing the wages of a co-worker, unless the co-worker consents. Permission may be given orally or in writing, as long as it constitutes express, advance, and voluntary authorization. The co-worker can withdraw his or her consent at any time. Second, employers may limit disclosure or discussion of wages by an employee who has access to wage information of other employees as part of that employee's essential job functions. Finally, the provisions in the new regulations are not to be interpreted to diminish or waive any rights or obligations of any employee pursuant to any other law, regulation, or collective bargaining agreement.

New York employers should ensure compliance with all state legislation, paying especially close attention to areas where state and local requirements differ from federal requirements.

The full text of the rule may be reviewed [here](#).

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