

Pay Equity Issues & Insights Blog



Money Talks: NY DOL Adopts Regulations on Employee Discussion of Wages

By Robert Whitman and Samuel Sverdlov

Seyfarth Synopsis: *New regulations from the NY Department of Labor clarify employers' ability to limit employees' discussion of wages.*

The New York Department of Labor has promulgated [regulations](#) that permit employers to place "reasonable" limitations on employees' discussion of their wages. The regulations, issued February 1, 2017, provide that such limitations are permissible if they are contained in a written policy and are "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."

The regulations follow the January 2016 amendments to the New York Labor Law, which restrict employers' ability to prohibit employees from inquiring about, discussing, or disclosing wage information. (See [here](#) for more information on the amendment.) The statutory amendments included a proviso that "[a]n employer may, in a written policy provided to all employees, establish reasonable workplace and workday limitations on the time, place and manner for inquiries about, discussion of, or the disclosure of wages."

The new regulations amplify that proviso. The DOL has made clear that, while employers may impose some limitations on employees' discussion of wages, they may not "impose restrictions on employees in such a way that unreasonably or effectively precludes or prevents inquiry, discussion, or disclosure of wages at the worksite and/or during work hours, directly or in practice." Without giving any examples, the regulations -- adopting concepts lifted from the First Amendment setting -- state only that the policies must be content-neutral, narrowly tailored, justified by a "significant interest" of the employer, and ensure that employees have "ample alternative channels" for their discussions.

However, in a potentially significant carve-out, the DOL has stated that "an employer may prohibit an employee from discussing or disclosing the wages of *another employee* unless the other employee provides verbal or written permission, either directly or indirectly" (emphasis added). Such permission need not be in writing, but must be "express" and provided in advance, and may be withdrawn at any time. The regulations also permit limitations on wage discussions where an employee "has access to wage information of other employees as part of that employee's essential job functions."

Where employers choose to adopt a policy restricting discussion of wages, the policy must be in writing, and it must be communicated to employees electronically, through postings, or by paper copy. If the policy is distributed electronically, employees must be (1) provided with the ability to view and print the information while the employees are at work without cost to them, and (2) notified of their right to print such materials by the employer through the electronic notice process.

Although posting of an employer policy is one permitted means of communication to employees, the DOL, in response to

comments on an earlier draft of the regulations, expressly declined to impose a mandatory posting obligation.

The 2016 Labor Law amendment was part of a broader set of revisions aimed at eliminating the wage gap between men and women. The rationale was that if employees can discuss their wages with each other, they can more readily identify and seek to remedy disparities. Many employers are already aware of requirements under the National Labor Relations Act that prohibit employers from interfering with employees' right to engage in "protected concerted activity," including discussion of wages. However, since the NLRA generally does not apply to supervisors, many employers have policies restricting managers and executives from discussing wages. Any such employers in New York should revisit and modify their policies and handbooks to ensure that they are compliant with both the requirements of the NLRA *and* the new NYLL regulations.

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