

New York City Human Rights Law Amended to Ban Employers From Requesting Job Applicant Salary History

The Bottom Line

- *While New York City's law could potentially face legal challenge by business groups before October 31, 2017, employers are advised to review their hiring practices and identify where salary history is being requested. Employers may need to modify employment applications, pre-employment questionnaires, job interview guidelines and information requested from staffing agencies and recruiters.*
- *Companies are also advised to consider implementing training for human resources professionals and senior managers on these new legal requirements and best practices for documenting communications and negotiations with job applicants about their compensation and benefits.*

Beginning on October 31, 2017, New York City employers will be prohibited from making inquiries about the salary history of job applicants during the hiring process.

The new legislation, which was signed into law by Mayor Bill de Blasio on May 4, 2017 and amends the New York City Human Rights Law, makes it an unlawful discriminatory practice for an employer or staffing agency to:

1. inquire about the salary history of a job applicant; or
2. rely on the salary history of a job applicant in determining salary, benefits or other compensation for the applicant during the hiring process, including in the negotiation of a contract.

Employers are permitted – without inquiring about salary history – to engage in discussion with a prospective employee about the candidate's expectations for salary, benefits and other compensation. This includes discussion about unvested equity or deferred compensation that a job candidate may forfeit upon resignation from their current employer.

The law also does not prevent employer inquiries into any "objective measure" of an applicant's "productivity," such as revenue, sales or other production reports.

If a candidate voluntarily and without prompting discloses salary history during the hiring process, the law permits an employer or staffing agency to consider the candidate's salary history and to verify salary information.

The new law does not apply to the following scenarios:

- Employees who are applying for an internal transfer or promotion with their current employer.
- Background checks or efforts to verify non-salary related information provided by job applicants. However, if the verification or background check reveals salary history, employers may not rely on the salary information to determine salary, benefits or other compensation.

- Actions that an employer or staffing agency may take under federal, state or local laws that authorize disclosure or verification of salary history or require knowledge of an applicant's salary history in order to set compensation.
- Public employee positions for which salary, benefits or other compensation are determined pursuant to procedures established by the collective bargaining process.

By enacting this legislation, New York City joins states and cities such as Massachusetts and Philadelphia in seeking to close the gender pay gap in employment by lowering the likelihood that employers will rely on historical salary levels that may be tainted by gender discrimination. It should be noted, however, that enforcement of Philadelphia's salary history ban has been temporarily halted pending a lawsuit filed by the Chamber of Commerce for Greater Philadelphia.

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