

NEW YORK LEGISLATURE PASSES SALARY HISTORY INQUIRY AND USE BAN

Hodgson Russ Labor & Employment Alert
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The New York State Legislature just passed sweeping legislation that would strictly limit the ability of employers to ask for or rely on an applicant's wage or salary history. This legislation awaits Governor Cuomo's signature to become law, and will take effect 180 days thereafter. Once effective, the law will apply to all private and public employers.

Specifically, the legislation makes it unlawful to rely on an applicant's wage or salary history in determining whether to offer employment to the applicant or in determining the wages or salary to be paid to the applicant. The legislation also makes it unlawful to seek, request, or require — whether verbally or in writing — wage or salary history from an applicant or current employee as a condition of being interviewed for, being considered for, or receiving employment or a promotion. Employers are also generally prohibited from obtaining this information from other current or former employers of the applicant or employee.

The legislation also includes “anti-retaliation” provisions that make it unlawful to refuse to hire, promote, or otherwise employ, or otherwise retaliate against an applicant or employee “based upon prior wage or salary history” or a refusal to provide wage or salary history. These provisions also make it unlawful to retaliate against an applicant for complaining about a violation of the new law.

An individual who is aggrieved by a violation of the salary history law can bring a civil action. A court can award a prevailing plaintiff injunctive relief, compensation for any damages sustained as a result of the violation, and reasonable attorneys' fees.

The legislation includes three exceptions. First, it expressly states that it does not prevent an applicant or employee from “voluntarily, and without prompting, disclosing or verifying wage or salary history,” including for the purpose of negotiating compensation. Second, the legislation allows an employer to confirm wage or salary history after an offer of employment with compensation has been made, but only if the applicant or employee responds to the offer by providing prior wage or salary information to support a wage or salary higher than offered. Finally, the legislation does not apply where any federal, state, or local law enacted prior to the effective date of this legislation requires the disclosure or verification of salary history information to determine an individual's compensation.

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This type of legislation is not new for employers in New York City, Westchester County, and Albany, where salary history bans have previously been enacted.

In view of the likelihood that the Governor will sign this new legislation, New York employers should immediately prepare to:

- Review job applications and other pre-employment forms to remove any requests for or references to wage or salary history;
- Review any written policies regarding hiring and pre-employment screening to ensure they are consistent with the legislation;
- Evaluate procedures for setting compensation to ensure that salary or wage history is not a component of the decision except where expressly permitted by the legislation; and
- Provide training to individuals who conduct interviews. This training should underscore the importance of not asking any questions that could be interpreted as calling for salary or wage history information, and should provide instructions on what to do if an applicant volunteers such information.

If you have any questions regarding this new legislation or its impact on employers, please contact one of our Labor and Employment attorneys.

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