

NYC SLATED TO LIMIT EMPLOYERS' INQUIRIES INTO SALARY HISTORY OF JOB APPLICANTS

Labor & Employment Alert
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On April 5, 2017, the New York City Council passed a bill that would amend the New York City Human Rights Law to limit employers' ability to inquire about the salary history of an applicant for employment.

The bill, which would apply to New York City employers with four or more employees, makes it an "unlawful discriminatory practice" for an employer to "inquire about the salary history of an applicant for employment" or to rely on the salary history of an applicant in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of a contract. Salary history includes the applicant's current or prior wages, benefits, or other compensation, but does not include productivity measures such as revenue or sales volume. The term "inquire" is defined broadly and includes: (a) communicating any question or statement, whether verbal or written, to the applicant or his or her current or former employer for the purpose of obtaining a job applicant's salary history or (b) conducting a search of public records or reports for the purpose of obtaining a job applicant's salary history.

Where a job applicant discloses his or her salary history "voluntarily" and "without prompting," the employer will be permitted to verify the applicant's salary history and may consider salary history in determining salary, benefits, and other compensation for such applicant.

Importantly, the bill:

- does not apply to applicants for internal transfer or promotion with their current employer or to public employees whose compensation is determined pursuant to procedures established by collective bargaining
- allows employers to inform the applicant, in writing or otherwise, of the proposed or anticipated salary or salary range for the position
- allows employers to discuss with an applicant his or her expectations with respect to salary, benefits, or other compensation, including any unvested equity or deferred compensation that the applicant would lose by virtue of leaving his or her current employment
- does not apply where federal, state, or local law expressly authorizes the disclosure or verification of salary history for employment purposes or requires the employer's

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knowledge of salary history to determine the employee's compensation

- does not apply to a background check intended to verify a job applicant's disclosure of non-salary related information, so long as such background check does not result in disclosure of the applicant's salary history

New York City Mayor Bill de Blasio, who issued an executive order banning City agencies from asking job applicants about their salary history in November 2016, is expected to sign the bill into law. Once signed, the bill would take effect 180 days thereafter.

Complaints may be filed with the New York City Commission on Human Rights or directly in court. The statute of limitations for filing any such complaint would be one year, if filed with the Commission, and three years, if filed in court.

As with other New York City Human Rights Law violations, employers that violate this bill, assuming it becomes a law, would be liable for compensatory damages (including front pay and back pay), punitive damages, and attorneys' fees and costs, as well as a civil penalty of up to \$250,000 for violations that "are the result of willful, wanton or malicious conduct."

If signed by Mayor de Blasio, this bill may face a constitutional challenge similar to that brought against a comparable law recently passed by the City of Philadelphia. In that case, the Chamber of Commerce of Greater Philadelphia challenged a recently passed Philadelphia law that prohibits employers from asking job candidates for their salary histories on the grounds that it deprives employers of their First Amendment rights. New York City's Public Advocate, the prime sponsor of the New York City bill, is on record that she expects the business community to mount a similar challenge to the constitutionality of the New York City bill. Stay tuned.

Please contact one of our labor and employment attorneys should you have questions about this bill.