

Client Alert

New York State Now Prohibits Salary History Inquiries

January 14, 2020 – As of January 6, 2020, New York is now the newest state to prohibit employers from inquiring about salary history. The new law, designed to close the gender wage gap, took effect last week as part of a broader package of pro-worker legislation. It is similar to, though in certain ways broader than, the [existing New York City ban on salary history inquiries](#) enacted more than two years ago, about which we previously written [here](#).

The New York State Law

[Labor Law Section 194-a](#) amends the New York Labor Law to make it unlawful for any public or private employer in New York State to ask job applicants or current employees for their wage or salary history as a condition of employment or promotion, and from seeking similar information from other sources like other employees or employment agencies. Employers are also prohibited from refusing to interview, consider, employ or promote an applicant or current employee based on their salary history or refusal to provide their salary history. The New York State law is broader than its New York City predecessor in that its salary history ban applies to both job applicants and current employees.

Exceptions:

1. Employers are not prohibited from asking job applicants for their salary expectations for a certain position;
2. Applicants and current employees may *voluntarily and without prompting* disclose or verify their salary history, for the purpose of negotiating wages or otherwise. For example, an employer would be permitted to confirm salary history if at the time an offer of employment is made, the applicant or employee responds to the offer by providing prior salary history to support a salary higher than that offered by the employer. The employer may also factor in that voluntarily disclosed salary information in determining the salary for that prospective or current employee;
3. Notably, however, an employer may not pose an “optional” salary history question on a job application seeking a voluntary (but not mandatory) response;
4. The [FAQs on the state’s website summarizing the salary history ban](#) explain that an applicant’s salary history information includes “compensation and benefits.” However, nothing in the text of the law or the FAQs prevents employers from inquiring about other objective measures of an applicant’s productivity such as revenue, sales, or production reports. Profit and Loss (P&L) statements and track records, to the extent they can be disclosed, are excluded from the ban as well.

Enforcement and Right of Redress:

Employers that violate the law may be subject to a civil court action or face inquiries from the New York State Department of Labor’s Division of Labor Standards.

What New York State Employers Should Do to Avoid Liability

Employers should be vigilant in adapting their policies and practices to comply with the new law across New York State. Employers should be especially cognizant of the fact that they could also be held liable for indirect salary history inquiries, such as those sought through other employees or recruiting or staffing agencies. Proper policies include alerting hiring personnel and others vetting and interviewing applicants—including headhunters working at recruiting or staffing agencies—to refrain from making any salary inquiries. Employers should also consider updating their agreements with their recruiting or staffing agencies to ensure that they are properly protected against any potential liability arising out of these types of relationships.

Employers (as well as recruiting and staffing agencies) should also modify and update their employment applications to remove any requests (even “optional” ones) for information on salary history. New internal processes for vetting candidates during recruitment should also be created, including a format which excludes salary history information, when conducting background checks and eliminating such inquiries from questionnaires which previously focused on an applicant’s present or prior salary. Employers should be especially careful about questioning applicants about their salary history in New York where one party (potentially the “applicant”) could support a claim of violation of the new law because the applicant is legally permitted to record the interview—with or without the knowledge or consent of the other party (employer or recruiting and/or staffing agency). Employers and their agents may also consider implementing a system to formally document instances where an applicant voluntarily discloses his or her previous salary history during the hiring process, so that a paper trail exists with respect to the lawful manner in which this information was obtained.

Similar Legislation in Other States

According to HRdive.com, New York State becomes the 17th state to prohibit employers from requesting salary history information from job applicants. In addition to the state-wide bans, there are also 20 local bans in effect. Those local jurisdictions in which similar bans exist may be found [here](#).

If you require any additional information concerning salary history inquiries, or about any other employment-related issues in New York or elsewhere, please contact:

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