

New York City Bans Salary History Inquiries

MAY 8, 2017

Adding to the growing list of pay transparency and equity laws aimed at narrowing the pay gap between men and women, New York City Mayor Bill de Blasio signed wage equity bill Int. No. 1253-A into law on May 4, 2017 (the Law). The Law prohibits New York City employers from inquiring into the salary history of a job applicant, or from relying upon a job applicant's wage history when making compensation decisions during the hiring process. The Law follows Mayor de Blasio's issuance of an executive order, in November 2016, banning similar inquiries of applicants for city agency jobs. (For more information on similar legislation, see our recent client briefings, [New York Governor Issues Executive Orders to Address Wage Gap](#), [Massachusetts Passes New Pay Equity Law](#), and [Philadelphia Enacts Ordinance Banning Pay History Inquiry](#)). The Law takes effect October 31, 2017.

Prohibited Practices

The Law amends the New York City Human Rights Law (NYCHRL) to make it an "unlawful discriminatory practice" for employers or their agents:

1. "to inquire about the salary history of an applicant for employment;" or
2. "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" is defined broadly to include an applicant's "current or prior wage, benefits or other compensation." Salary history does not include, however, any "objective measure of the applicant's productivity, such as revenue, sales or other production reports." "Inquiry" is likewise broadly defined as "any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history," as well as searching publicly available records.

Permitted Practices & Exceptions

Significantly, the Law allows employers to engage in discussions with an applicant regarding his or her expectations with respect to salary, benefits, and other compensation, as long as the employer does not inquire into salary history. Employers may also inform an applicant about a position's proposed or anticipated salary or salary range. Additionally, if an applicant "voluntarily and without prompting" discloses salary history to an employer, employment agency, or employee or agent thereof, the employer, employment agency, or employee or agent thereof may consider salary history in determining the applicant's salary, benefits, and other compensation, and may also verify such applicant's salary history. Finally, the Law's prohibitions do not apply in the following situations:

- Where the applicant is applying for internal transfer or promotion with a current employer;
- Any actions taken by an employer, employment agency, or employee or agent thereof pursuant to any federal, state, or local law that specifically authorizes the disclosure or verification of salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee's compensation;
- Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant's disclosure of non-salary related information, or to conduct a background check, provided that if such verification or background check discloses the applicant's salary history, such disclosure shall not be relied upon for purposes of determining the salary, benefits, or other compensation of such applicant during the hiring process, including the negotiation of a contract; or
- Any public employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining.

Remedies

Violations of the Law may result in any of the remedies available under the NYCHL, including monetary damages, fines, and/or injunctive relief.

Legal Challenges & Action Steps

The Law may be susceptible to court challenge. Notably, the Chamber of Commerce for Greater Philadelphia filed a legal challenge to a similar ordinance in Philadelphia, contending that the law impedes on free speech without any evidence of a connection between salary history and gender-based wage disparities. The Philadelphia salary equity law was scheduled to go into effect May 23, 2017, but the city agreed to delay enforcement until the court challenge is resolved. Nevertheless, we are likely to continue to see similar state and municipal legislation. More than 20 other city and state legislatures have introduced similar measures.

Despite the possibility of a legal challenge, New York City employers should begin taking steps to ensure application and hiring documentation, procedures, and policies are in compliance with the Law by October 31, 2017.

3 Min Read

Related Locations

[Charlotte](#)[Chicago](#)[Dallas](#)[Houston](#)[Los Angeles](#)[New York](#)[San Francisco](#)[Silicon Valley](#)[Washington, DC](#)

Related Topics

[New York](#)[Labor & Employment](#)[Employment Law](#)

Related Capabilities

Labor & Employment

Related Regions

North America

Related Professionals



Derek G. Barella



Shane Blackstone



Joan Fife



Aviva Grumet-Morris



Deborah S.K. Jagoda



Scott Landau



Laura Petroff



Michael Roche



Stephen Sheinfeld



Cardelle Spangler



William Sunkel



Emilie Woodhead