

ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

New York City to Enact Law Preventing Employers from Inquiring About Salary History

By Bennett Pine

Joining a growing list of jurisdictions, on April 5, 2017, the New York City Council voted 47-3 to pass a bill sponsored by Public Advocate Letitia James that bans employers from asking job applicants for previous salary and employee benefit information, a practice that perpetuated a cycle of wage discrimination.

Background and Purpose

According to a report commissioned by the New York City Council, women in New York state earn only 87% of what men in the same jobs earn. Moreover, the report concludes that, for Hispanic, African-American and Asian women, the wage gap is often closer to 50% of what white men earn. The conventional wisdom is that inquiring into an applicant's salary history only serves to further perpetuate this wage inequity.

Growing Trend

In 2016, New York Governor Cuomo and New York City Mayor de Blasio issued executive orders to ban salary history information inquiries from applicants for *public* sector jobs. Massachusetts and Philadelphia already have enacted bans on inquiries into salary history, and similar legislative restrictions presently are pending in California, New Jersey and elsewhere. The New York City Council also noted that a number of New York City companies, including Kickstarter, Peeled Snacks, Happy Valley Meat Company, The Cleaver Co., Kinolved, MCG Consulting, The 4th Bin, BBMG and others already voluntarily have adopted salary history bans.

What is Prohibited

The law prohibits businesses from (1) inquiring about the salary history of a job applicant or (2) relying on the salary history of an applicant in determining salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of a contract. These prohibitions extend to inquiries made to the applicant herself and to her current or former employer, as well as searches of public records. The term

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“salary history,” as it is used in the law, includes an applicant’s current or prior wage, benefits or other compensation. It does *not* include any objective measure of an applicant’s productivity (e.g., revenue, sales or other production reports).

What is Permissible

Employers may still, without inquiring about salary history, discuss with applicants their *expectations* for salary, benefits and other compensation. This discussion may include any unvested equity or deferred compensation that the applicant would forfeit or have canceled by virtue of his resignation from employment with their current employer. In addition, where an applicant *voluntarily* and *without prompting* discloses their salary history to an employer, such employer may consider the salary history in determining salary, benefits and other compensation for the applicant, and may verify the applicant’s salary history.

The new law does not apply to applicants for internal transfer or promotion within an organization or attempts by an employer to verify an applicant’s disclosure of non-salary-related information or to conduct a background check in accordance with law. The new law also does not prohibit actions taken by an employer pursuant to federal, state or local laws that specifically authorize the disclosure or verification of salary history for employment purposes, or which specifically require knowledge of prior salary history in order to determine an applicant’s compensation.

Guidance for Employers

Employers in New York City should take steps as soon as possible to comply with this new legislation. Employment applications should be reviewed immediately to ensure that they do not request any applicant to disclose compensation history. Individuals who conduct employment interviews must be made aware of the new prohibitions on inquiring about salary history from applicants or interviewees.

Remedies

The bill amends the New York City Human Rights Law and imposes penalties ranging from \$125 to \$250,000 for “intentionally malicious” violations.

Effective Date

Mayor de Blasio is known to be a strong supporter of this legislation and is expected to sign it shortly. The law will take effect 180 days after he does. Public Advocate James has stated that she anticipates litigation challenging the new law prohibiting inquiry into an applicant’s salary history. So stay tuned! ▲

