

NY State Targets Pay Equity

On January 9, New York Governor Andrew Cuomo issued a pair of executive orders extending new pay equity protections to employees of the state and its contractors. Aimed at narrowing the gender wage gap, one order bars state agencies from asking applicants for salary history during the hiring process while the other imposes new pay data disclosure requirements on state contractors. State agencies and other entities, and companies that do business with the state, will want to review their practices to ensure compliance.

Background

In 2015, New York Governor Andrew Cuomo signed into law the so-called Women’s Equality Agenda – a group of five bills aimed at expanding employment-related protections for women. One of those – the Achieve Pay Equity bill – amended the state’s [Labor Law](#) to strengthen and expand protections against gender-based pay disparities. Among other things, the amended law generally prohibited private employers from paying women less than men for performing equal work in workplaces in the same geographic region unless the disparity is based on: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a *bona fide* factor other than sex. In addition to expanded equal pay protections, it also provided new pay transparency protections along with increased penalties and larger damage awards for pay discrimination, beginning in 2016. (See our [December 18, 2015 For Your Information](#).)

New York State Executive Law [Article 15-A](#) requires state contractors to report on the composition of the workforce they use in performing state contracts for services, commodities and construction valued at \$25,000 or more. Currently, companies are required to furnish equal employment opportunity information such as sex, race and ethnicity. Because these reports do not expressly require salary information, they do not allow the state to identify pay disparities.

Executive Orders on Pay Equity

On January 9, New York Governor Andrew Cuomo issued a pair of executive orders, aimed at narrowing the gender wage gap for employees of New York state and its contractors.



Ensuring Pay Equity by State Employers ([Executive Order No. 161](#)) extends new pay equity protections by barring state employers from asking about salary history during the hiring process. It prohibits state entities from asking about, or requiring, a job applicant to provide current or prior salary history before a conditional job offer (including compensation). For these purposes, state entities include “all agencies and departments over which the Governor has executive authority” and “all public benefits corporations, public authorities, boards, and commissions, for which the Governor appoints the Chair, the Chief Executive, or the majority of Board Members, except for the Port Authority of New York and New Jersey.” Unless required by law or a collective bargaining agreement, state agencies and other state entities that have a prospective hire’s salary information cannot rely on it to fashion a salary offer. However, salary information may be requested and verified post-offer.

Ensuring Pay Equity by State Contractors ([Executive Order No. 162](#)) imposes new pay data disclosure requirements on state contractors and subcontractors. Companies will be required to disclose to state agencies the job title and salary data of each employee who works on a covered state contract for services, commodities and construction, in addition to the equal opportunity information they currently provide. Contractors unable to identify those employees who work directly on a state contract will have to submit information for the entire workforce. The expanded reporting requirements will apply to state contracts, agreements and procurements issued and executed after May 31, 2017. Information will have to be provided on a quarterly basis for prime contracts valued at more than \$25,000, and on a monthly basis for prime construction contracts valued at more than \$100,000.

In Closing

Employers that plan to do business with New York state after May 31 should ensure that they would be able to identify employees who are working on covered contracts to ensure compliance. Employers may also want to review their applicant screening and hiring practices to anticipate changes that might be needed as other states and cities consider measures to close the gender wage gap.

Pay Equity Laws Trending

Recently, state and local measures targeting the pay gap have begun to focus on restricting the use of salary information to screen applicants and formulate job offers. Last year, NYC Mayor Bill de Blasio signed an executive order barring city agencies from soliciting salary history during the application process. California enacted a law precluding employers from using prior salary history to justify a wage disparity between employees performing similar work. (See our [FYI from October 7, 2016](#).) Last month, Philadelphia became the first US city to bar both public and private employers from asking about, or requiring disclosure of, prospective hires’ wage history. (See our [January 27, 2017 FYI](#).) Beginning next year, Massachusetts employers will be prevented from screening applicants based on salary history or seeking salary history prior to extending a conditional job offer. (See our [August 3, 2016 FYI Alert](#).)

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