

## NYC Bars Salary History Inquiries

On April 5, 2017, the New York City Council passed a bill restricting employers with four or more employees from asking applicants about their salary history during the hiring process. Mayor Bill de Blasio is expected to sign it into law, making New York City the latest jurisdiction to prohibit employers from inquiring about prospective employees' pay histories. The new restrictions would take effect 180 days after signing. Employers should review their applicant screening and hiring protocols, and make any needed changes, to ensure compliance.

### Background

Last year, Massachusetts enacted the country's first statewide ban on salary history inquiries, aimed at narrowing the gender pay gap. That law effectively prevents Massachusetts employers from using salary information to screen applicants or formulate job offers. (See our [August 3, 2016 FYI Alert](#).) Shortly thereafter, California enacted a law precluding employers from using prior salary history to justify a wage disparity between employees performing similar work. (See our [October 7, 2016 For Your Information](#).)

Earlier this year, Philadelphia became the first U.S. city to prohibit salary history inquiries during the hiring process when Mayor Jim Kenney signed the so-called wage equity law. (See our *For Your Information* dated [January 27, 2017](#).) Slated to take effect May 23, the ordinance would bar both public and private employers from asking job applicants about, or requiring disclosure of, their wage and fringe benefits history. Last week, the [Chamber of Commerce](#) for Greater Philadelphia filed a federal [lawsuit](#) to block enforcement of the ordinance on the grounds that it violates employers' free speech and other constitutional rights, and will make recruiting more difficult and businesses in Philadelphia less competitive. A [bill](#) that would preempt and supersede the city's ordinance is also pending in the state legislature.



## New Restrictions for NYC Employers

Last year, Mayor de Blasio signed an [executive order](#) barring city agencies from asking about an applicant's pay history prior to a conditional offer of employment. On April 5, the New York City Council passed a bill that similarly restricts private employers from inquiring about salary history during the hiring process. Continuing the recent trend toward expanding pay equity protections at the state and local level, [Intro No. 1253-2016](#) amends the New York City Human Rights Law (HRL) to make it a discriminatory employment practice for an employer with four or more employees or an employment agency to:

- Inquire about an applicant's current or prior wage, benefits or other compensation history
- Rely on an applicant's salary history in determining salary, benefits or other compensation during the hiring process, including the negotiation of a contract

### Key Terms

The bill broadly defines the term "to inquire" as meaning "to communicate 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, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history." For these purposes, "salary history" includes the applicant's current or prior wage, benefits or other compensation, but not objective productivity measures such as revenue, sales, or other production reports.

### Permissible Inquiries

The bill does not apply to:

- Actions taken by an employer or employment agency pursuant to federal, state or local laws that expressly authorize the disclosure or verification of salary history for employment purposes, or require salary history to determine an employee's compensation
- Applicants for internal transfer or promotion
- Attempts by an employer or employment agency to verify an applicant's disclosure of non-salary related information or conduct a background check, provided that an applicant's salary history disclosed in that process cannot be relied upon to determine salary, benefits or other compensation during the hiring process, including contract negotiation

### Conducting Background Checks

While the NYC bill does not bar background checks, it would limit how applicant salary information disclosed in that process could be used. However, other laws affect when and how background checks may be conducted. NYC's Fair Chance Act prohibits most employers from conducting criminal background checks or inquiring about a job applicant's criminal history prior to a conditional job offer. It also imposes certain requirements on employers that seek to base a hiring decision on criminal history information they later receive. (See our [December 1, 2015 FYI](#).)

The Stop Credit Discrimination in Employment Act generally prohibits NYC employers from running credit checks or using an applicant's or employee's consumer credit history for employment purposes. (See our [September 28, 2015 FYI](#).)

The federal Fair Credit Reporting Act does not restrict employers' ability to secure consumer credit histories or limit their ability to factor the contents of credit reports into hiring or other employment decisions, but it does require employers to follow certain notice and authorization procedures to secure an employee's or applicant's credit report.

- Public employee positions for which salary, benefits or other compensation are determined pursuant to collective bargaining

In addition, the employer may rely on salary history the applicant voluntarily discloses without prompting and verify its accuracy. The ordinance also makes clear that informing an applicant of a position's proposed or anticipated salary or salary range, or discussing a prospective hire's salary, benefits and other compensation expectations, is not prohibited. That discussion may include unvested equity or deferred compensation that an applicant would forfeit by switching jobs.

New York City Mayor Bill de Blasio, who has publicly supported the bill, is expected to sign it into law. It would take effect 180 days after signing.

## In Closing

Employers will want to review their employment practices to determine what, if any, changes they may have to make to comply with the new restrictions on requesting and using applicant pay history during the recruitment and hiring process. NYC and multistate employers, in particular, that use standard applications will also want to consider whether any changes may be needed to ensure compliance.

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