

NYC Mayor Signs Salary History Ban Into Law

On May 4, NYC became the latest jurisdiction to enact a law restricting employers' use of prospective employees' pay histories during the hiring process. Mayor Bill de Blasio signed a bill passed by the City Council last month that bars employers from inquiring about job applicants' compensation and benefits history and from relying on salary history in formulating a job offer. The new law will take effect on October 31. Employers should update their applicant screening and hiring practices, and train employees involved in the hiring process to ensure compliance.

Background

Last year, New York City Mayor de Blasio signed an [executive order](#) prohibiting city agencies from making pre-offer inquiries about an applicant's pay history. On April 5, 2017, the New York City Council passed [Intro No. 1253-2016](#), a bill that similarly restricts private employers from inquiring about applicants' salary and benefits history during the hiring process. (See our [April 12, 2017 For Your Information](#).)

When Mayor de Blasio signed the bill into law on May 4, NYC became the latest jurisdiction to bar employers from relying on salary history to screen applicants, evaluate their candidacy, or formulate job offers. The new law will take effect on October 31, 2017.

Comment. Massachusetts and Philadelphia recently enacted laws restricting salary history inquiries. Also aimed at narrowing the gender gap, similar measures are under consideration by other cities and states, as well as at the federal level. While Massachusetts is on track to bar salary history inquiries in 2018, Philadelphia's ordinance that had been scheduled to take effect this month is now on hold pending a legal challenge on constitutional and other grounds. (See our [August 3, 2016 FYI Alert](#) and [April 28, 2017 For Your Information](#).) Whether the NYC law will face a similar challenge remains to be seen.

Commonplace Hiring Practices Barred

The new law amends the New York City Human Rights Law (NYCHRL) to make it a discriminatory employment practice for an employer or an employment agency to:



- Ask an applicant, the applicant's current or former employers (or the employers' agents or employees) about an applicant's compensation and benefits history
- Conduct searches of public records to obtain salary 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

While the new law generally prohibits an employer's inquiry into and reliance on salary history, it does contain certain important clarifications and carve-outs. The salary history ban will not apply when:

- Federal, state or local law specifically authorizes the disclosure or verification of salary history
- Applicants are seeking internal transfers or promotions with a current employer, or public employee positions for which salary, benefits or other compensation are determined pursuant to collective bargaining
- Verifying applicants' disclosure of non-salary related information or background checks, provided the employer does not rely on any salary history disclosed during that process in determining or negotiating the job offer

Notably, the new law will not prevent an employer from informing an applicant of a position's anticipated salary or salary range, or discussing the prospective hire's salary, benefits and other compensation expectations. Those discussions may include unvested equity or deferred compensation that an applicant would forfeit by switching jobs. While an employer may not ask about salary history, it may ask for objective measures of an applicant's past productivity, such as revenue or sales. To the extent that applicants "voluntarily and without prompting" disclose compensation history, employers may verify its accuracy and rely on the volunteered information in formulating a job offer.

All of the remedies available under the NYCHRL will be available for violation of the salary history ban — including money damages, fines and/or injunctive relief. Individuals may either file a claim in court or a complaint with the NYC Commission on Human Rights. The commission may fine employers up to \$250,000 for willful and malicious violations of the law, and award compensatory damages and other relief.

In Closing

Effective October 31, NYC employers will no longer be able to use salary history to screen applicants, evaluate an applicant's candidacy, or formulate job offers. Employers should update their employment applications and hiring practices, and train employees involved in the hiring process to ensure compliance.

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