

Delaware Bans Salary History Inquiries

On June 14, Delaware enacted a law barring employers from requesting the compensation history of job applicants, effective December 14. With that, Delaware became the latest jurisdiction to join a growing trend aimed at closing the gender pay gap by curbing inquiries about past wages. Employers will want to update their applicant screening and hiring practices to ensure compliance.

Background

Increasingly, state and local measures targeting the gender pay gap have begun to focus on curbing the use of salary information to screen applicants and formulate job offers. In August 2016, Massachusetts became the first state to pass a law restricting salary history inquiries by private employers. Beginning next year, Massachusetts employers will no longer be able to screen applicants based on salary history or seek salary history prior to extending a conditional job offer. (See our [August 3, 2016 FYI Alert](#).) Oregon's Equal Pay Act, signed into law June 1, contains similar restrictions. (See our [June 15, 2017 For Your Information](#).)

Earlier this year, Philadelphia became the first major city in the nation to enact an ordinance barring employers from asking about, or requiring disclosure of, prospective hires' wage history. (See our [January 27, 2017 For Your Information](#).) Although it was scheduled to take effect May 23, it remains on hold pending a legal challenge by the Chamber of Commerce of Greater Philadelphia. (See our [June 19, 2017 For Your Information](#).) Last month, New York City enacted a salary history ban poised to take effect on October 31. (See our [May 10, 2017 For Your Information](#).)



Delaware's Salary History Ban

On June 14, Governor John Carney signed a [law](#) (House Substitute 1 for House Bill 1) aimed at narrowing the gender pay gap by prohibiting employers from seeking a job applicant's wage, benefits and other compensation history either from the prospective employee or a current or former employer. Along with making compensation inquiries unlawful, the law explicitly prohibits employers from screening applicants based on compensation history or requiring their past compensation to satisfy minimum or maximum criteria. The new restrictions are slated to take effect December 14.

The new law would not prevent employers from discussing or negotiating compensation expectations, provided they do not request or require salary history. While precluding the use of applicants' prior compensation as a benchmark for salary offers, it would allow employers to seek and confirm such information after a job offer that includes compensation has been made.

An employer that fails to comply with the new restrictions will face civil penalties of \$1,000-\$5,000 for a first offense, and \$5,000-\$10,000 for each subsequent violation. For these purposes, screening applicants based on compensation history or seeking such information with respect to interviewing and hiring for a single position will constitute a single violation. The state Department of Labor will also have authority to file a civil penalty claim for violations in court. Notably, the law will not hold an employer liable for violations by a non-employee agent (such as an outside recruiter), provided the employer can show that it informed the agent of the new requirements and instructed it to comply.

Comment. Neighboring Philadelphia's salary history ban that was to take effect last month currently is on hold pending a legal challenge by the Chamber of Commerce of Greater Philadelphia, which represents members in southeastern Pennsylvania, southern New Jersey and northern Delaware. (See our *For Your Information* from [June 19, 2017](#).) Whether Delaware's new law will face a similar challenge remains to be seen.

In Closing

Employers will want to make any needed changes to their applicant screening and hiring practices to ensure compliance, and monitor legislation currently being considered in other states and cities.

Authors

Nancy Vary, JD
Abe Dubin, JD

Produced by the Knowledge Resource Center of Conduent Human Resource Services

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.