



ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

New York State Law Preventing Employers from Inquiring about Salary History Goes into Effect

By Bennett Pine

Joining a growing list of states and other jurisdictions, including New Jersey, New York City, and Westchester and Suffolk counties, the New York State law preventing employers from inquiring about a job applicant's salary and benefit history, signed into law by Gov. Andrew Cuomo on July 10, 2019, goes into effect January 6, 2020.

Background and Purpose

According to published reports, women in New York state earn only 87% of what men in the same job earn. Moreover, the report concludes that for Hispanic, African-American and Asian women, the wage gap often approaches 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.

What is Prohibited

The New York law prohibits businesses from inquiring about or relying on the salary history of a job applicant in determining salary, benefits, or other compensation during the hiring process, including the negotiation of a contract. These prohibitions extend to inquiries made to the applicant and to their current or former employers, as well as searches of public records. The term "salary history," as it is used in the New York law, includes an applicant's current or prior wage, benefits, and other compensation. It does not include any objective measure of an applicant's productivity (e.g., revenue, sales or other production reports).

In addition, an employer may not refuse to interview or hire an individual if they refuse to provide their wage, salary or benefit history. Such individuals also may not be retaliated against.

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What is Permissible

Without inquiring about salary history, employers may still discuss with an applicant their expectations for salary, benefits and other compensation. This includes discussing any unvested equity or deferred compensation the applicant would forfeit or have canceled as a result of resigning from their current job.

In addition, if an applicant voluntarily and without prompting discloses their salary history to an employer, the employer can verify it, and take it into consideration when determining salary, benefits and other compensation. An employer may also confirm an individual's salary history after an employment/compensation offer has been made and the individual responds by providing prior compensation history to support a request for a higher wage or salary.

Applicants and employees also may disclose or discuss their salary history for the purpose of negotiating compensation, provided the disclosure is made "voluntarily" and "without prompting."

There also appears to be no prohibition on an employer asking about the individual's compensation *expectations*.

Growing Trend

At least 17 states and 20 local governments prohibit an employer from requesting salary and benefit history from job applicants. (See, e.g. ELI Alert, April 12, 2017). More such laws and regulations are being considered and enacted and this number is expected to grow in 2020.

Guidance for Employers

Employers in New York state should take steps as soon as possible to comply with this new legislation. Employment applications, job interview and other related employer guidelines should be reviewed immediately to ensure they do not request or require an applicant to disclose compensation history. ▲

