

## Alert

### **New York City to Ban Employer Inquiries and Reliance on Salary History**

April 7, 2017

On April 5, 2017, by a 47-3 vote, the New York City Council passed a bill that bans New York City employers from inquiring about an applicant's "salary history" or relying on a job applicant's "salary history" in determining the applicant's salary, benefits or other compensation. New York City Mayor Bill de Blasio is expected to sign the bill, and the new law will go into effect 180 days after he signs it.

The new law, which applies to New York City employers with four or more employees, is intended to help eliminate pay inequality and amends the New York City Human Rights Law to make it "an unlawful discriminatory practice" for an employer to inquire about an applicant's salary history or conduct any public search to determine the applicant's salary history. In addition, the new law makes it "an unlawful discriminatory practice" for an employer to rely on an applicant's "salary history" in determining the salary or benefits of an applicant during the hiring process. "Salary history" means an "applicant's current or prior wage, benefits or other compensation."

Although the bill restricts employers from inquiring about or relying on salary history, employers are permitted to, "without inquiring about salary history," discuss with the applicant his or her expectations with respect to salary or benefits, "including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer." Further, an employer may lawfully rely on salary history in determining salary and benefits if an applicant "voluntarily and without prompting discloses salary history."

The law does not bar employers from verifying an applicant's background information, but if an employer inadvertently learns salary history information during the verification process, the employer cannot rely on the information. If an applicant has voluntarily disclosed salary history information, the employer is permitted to verify the information provided.

As with other violations of the New York City Human Rights Law, employers found in violation of the new law may be liable for compensatory damages (including front pay and back pay), punitive damages, and attorneys' fees and costs, as well as a civil penalty of up to \$250,000 for violations that "are the result of willful, wanton or malicious conduct."

Employers should carefully review their interview and hiring processes as a result of the new law. For example, employment applications should not ask for salary information. Employers should revise their neutral reference policies to not provide salary history information unless specifically requested by an employee. Employers should take steps to ensure that any discussions about salary or benefits are limited to applicants' expectations, and not to compensation the applicant has received from a prior employer. Further, to ensure an employer does not inadvertently obtain salary history information, employers should ensure that any background checks specifically exclude salary history information.

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