

NEWS ALERT**LABOR & EMPLOYMENT**

NYC Ban On Inquiring Into Salary History Takes Effect On October 31, 2017

By Salvatore G. Gangemi | October 26, 2017

The New York City Human Rights Law (“NYCHRL”) was amended back in May 2017 to prohibit employers and employment agencies from inquiring into the [salary history of job applicants](#). Employers and employment agencies had six months to prepare for that ban, which takes effect on October 31, 2017.

Although we previously covered the [amendment](#) in May 2017, a quick summary of its material provisions is in order:

- The salary history inquiry ban applies to all employers and employment agencies, regardless of size, that are hiring job applicants in New York City. This also includes situations where the job is located outside of New York City, although interviews occur in New York City. Consequently, the law affects employment outside of New York City as well.
- The ban does not apply to internal transfers or promotions, or to public sector jobs where salary is determined by procedures covered by a collective bargaining agreement.
- The law does not prohibit employers from inquiring into the job applicant’s compensation expectations or demands, but an applicant may not be required to disclose salary history. Care must be taken to avoid any questions or inquiries that could be viewed as prompting an applicant to disclose salary history.
- If an applicant “without prompting” voluntarily discloses salary history, the employer or recruiter may then discuss or inquire about it further, and may verify the history. Moreover, an employee’s unprompted voluntary disclosure of salary history entitles the employer or employment agency to consider it in determining compensation. This aspect of the law is tricky, because it could lead to disputes over whether the disclosure was prompted or not. A good practice would be to instruct the applicant at the outset of the interview in writing to avoid making any disclosures of past salary at any stage during the employment process. Moreover, job applications should be purged of all questions relating to salary history; a simple disclaimer warning applicants not to answer salary history questions will not be a sufficient shield to liability according to the New York City Commission on Human Rights.
- Although the law does not expressly prevent a former employer from disclosing salary history to a prospective employer, the NYCHRL imposes liability on a third party for aiding and abetting a violation of the law. Here is an additional reason for limiting personnel references to simply confirming dates of employment and positions held. A disclosure of salary history in a personnel reference could find the inquirer on the opposite end of an NYCHRL aiding and abetting claim.

New York City’s prohibition on inquiring into salary history reflects a trend in the law. In fact, New York State may not be far behind in banning such inquiries. A bill ([A2040C](#)), passed in the New York State Assembly, seeks to amend the New York State Human Rights Law to

provide similar protections. In addition to prohibiting retaliation against a prospective employee for opposing any unlawful practice, the New York State bill also provides that an “employer shall not refuse to hire . . . an employee or prospective employee based upon prior wage or salary history.” This language is pretty broad and at odds with New York City’s law, which permits consideration of salary history if voluntarily disclosed. It is likely that some form of ban will be enacted, although it is too soon to tell whether it will be more or less restrictive than New York City’s law. We will continue to keep you updated on further developments.

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