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Labor and Employment Alert: Delaware Becomes the Latest State to Ban Salary Inquiries

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Delaware recently enacted a law prohibiting employers from inquiring into applicants' salary histories. According to the legislation, "when employers ask prospective employees for their wage or salary history, it perpetuates disparities in pay based on gender from one job into another." And so, the Act prohibits employers from doing so. The law becomes effective in December 2017.

The law makes it an unlawful employment practice for an employer to (1) screen applicants based on their compensation histories, including by requiring that an applicant's prior compensation satisfy minimum or maximum criteria; or (2) seek the compensation history of an applicant from the applicant or from his or her current or former employer. "Compensation" includes monetary wages, benefits, and other forms of compensation.

An employer is allowed to discuss and negotiate compensation expectations so long as the employer does not request or require the applicant to provide his or her compensation history. Additionally, an employer may seek the applicant's compensation history after an offer of employment with terms of compensation has been extended and accepted, for the sole purpose of confirming the compensation history. If the applicant employee authorizes such post-offer disclosure, the authorization must be in writing.

Employers should review their applications and hiring practices and procedures to ensure they comply with these new restrictions. Contact your Vorys lawyer if you have questions about permissible and impermissible pre-employment inquiries.