

Labor and Employment Alert: New Jersey Bans Pre-Employment Salary Inquiries

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New Jersey recently joined a growing number of states and municipalities that have passed laws prohibiting employers from inquiring into a job applicant's salary history. Thirteen states (Alabama, California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Vermont and Washington) have passed bans of some form. Beginning January 1, 2020, it will be an unlawful employment practice for employers in New Jersey to screen a job applicant based on the applicant's salary history, including the applicant's prior wages, salaries, or benefits, or to require that the applicant's salary history satisfy any minimum or maximum criteria.

An employer may consider salary history in determining an applicant's salary, benefits, and other compensation, and may verify his or her salary history, if the applicant voluntarily, without prompting or coercion, provides that information. Similarly, an employer may acquire publicly available salary history information; but the employer may not retain or consider it unless the applicant voluntarily, without prompting or coercion, provides his or her salary history. In both cases, an applicant's refusal to volunteer compensation information may not be considered by the employer in making employment decisions. An employer also may request an applicant provide written authorization to confirm salary history after an offer of employment that includes an explanation of the overall compensation package has been made.

The prohibition on salary inquiries does not apply to:

- (1) Applications for internal transfer or promotion with a current employer or the use of previous knowledge obtained as a consequence of prior employment with the employer;
- (2) Actions taken pursuant to any federal law that expressly requires the disclosure or verification of salary history for employment purposes, or requires knowledge of salary history to determine an employee's compensation;

(3) Attempts by an employer to obtain, or verify an applicant's disclosure of, non-salary related information when conducting a background check if the employer specifies that salary history information is not to be disclosed. If it is disclosed, the employer may not retain or consider the salary information when determining the applicant's salary, benefits, or other compensation; or

(4) Inquiries regarding an applicant's previous experience with incentive and commission plans and the plans' terms if the employer does not seek or require the applicant to report earnings information in connection with the plans. The employer may not inquire into an applicant's experience unless the employer's job opening includes an incentive or commission component as part of the total compensation program.

An employer may inform an applicant of wage or salary rates set for the job by collective bargaining agreements or by civil service or other laws and may pay those rates if hired.

An employer who does business, employs persons, or takes applications for employment in at least one state other than New Jersey may include an inquiry regarding salary history on an employment application. However, immediately preceding that salary history inquiry, the applicant must state that an applicant for a position the physical location of which will be in whole, or substantial part, in New Jersey is instructed not to answer the salary history inquiry.

An employer who violates any of these provisions is liable for a civil penalty of up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. The law also amends the New Jersey Law Against Discrimination (NJLAD) to include salary history inquiries. If an applicant is a member of a protected class (which is broadly defined under the NJLAD), it is a discriminatory practice to screen a job applicant based on the applicant's salary history, including prior wages, salaries, or benefits; or to require that the applicant's salary history satisfy any minimum or maximum criteria. Notably, unlike other discrimination claims, an award of punitive damages is not available for a violation.

Employers should review their hiring procedures and employment applicants to ensure they comply with the new law. Contact your Vorys lawyer if you have questions about pay equity laws, salary bans, or other pre-employment inquiries.