

Publications

Labor and Employment Alert: New York City Prohibits Inquiries into Job Applicant Salary History

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This week the New York City Council passed legislation (Int. No. 1253) to prohibit employers from inquiring into applicants' salary history during the hiring process. Under the New York City Human Rights Law, it is already unlawful for an employer to discriminate against a person "in compensation or in terms, conditions or privileges of employment" on the basis of gender. It will now be an unlawful discriminatory practice to ask applicants' about their salary history. According to the legislative history on Int. No. 1253, employers perpetuate the gender wage gap when they rely on applicants' prior salary histories to determine compensation, and this law can "help break the cycle of gender pay inequity." The legislation follows similar laws enacted last year in Massachusetts and Philadelphia, Pennsylvania.

Under the New York City law, an employer or employment agency is prohibited both from inquiring about the salary history (i.e., wages, benefits, or other compensation) of an employment applicant and from relying on an applicant's salary history in determining his or her salary, benefits, or other compensation during the hiring process, including when negotiating a contract. "To inquire" is broadly defined to mean communicating any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer to obtain his or her salary history. It also includes searching publicly available records or reports to obtain that salary history. An employer or employment agency is permitted to inform an applicant about the position's proposed or anticipated salary or salary range. Moreover, "salary history" does not include any objective measure of the applicant's productivity such as revenue, sales, or other production reports.

An employer or employment agency may, without inquiring about salary history, discuss with an applicant his or her expectations with respect to salary, benefits, and other compensation, including unvested equity or deferred compensation that would be forfeited should the applicant resign from his or her current employer. And if an applicant voluntarily and without prompting discloses his or her salary, then the employer or employment agency may consider that information in

determining the applicant's salary, benefits, and other compensation; the applicant's salary history may then also be verified.

The prohibition into inquiring about salary histories does not apply:

1. When federal, state, or local law specifically authorizes disclosing or verifying salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee's compensation;
2. To applicants for internal transfer or promotion with their current employer;
3. To attempts by an employer or employment agency to verify an applicant's disclosure of non-salary related information or conduct a background check if the disclosure of salary history during that verification or check is not be relied upon to determine the applicant's salary, benefits or other compensation; or
4. Public employee positions for which salary, benefits or other compensation are determined in a collective bargaining agreement.

Mayor Bill DeBlasio is expected to sign the legislation soon, which will then become effective in 180 days. Employers in New York City should review their applications and hiring processes before the law's effective date to ensure that they comply with the new requirements. Contact your Vorys lawyer if you have questions about wage-hour laws in New York and New York City.