New York Governor Signs Executive Orders To Address Wage Gap

Insights
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On January 9, 2017, New York Governor Andrew Cuomo issued two executive orders aimed at addressing the perceived gender, race, and ethnicity-based wage gaps. Noting that the state government must lead by example and ensure equal pay for all New Yorkers, the two executive orders – which Governor Cuomo signed as part of his 2017 State of the State address – prevent state entities from asking job applicants about their compensation history and require state contractors to disclose data on the gender, race, ethnicity, job title, and salary of their employees.

Compensation Inquiries Banned
Executive Order No. 161 prohibits state agencies and other state entities from inquiring about the salary history of a prospective employee, until after the applicant is extended a conditional offer of employment with compensation. After an offer has been extended, the state entity may then request and verify compensation information.

If the state entity is already in possession of an applicant's prior compensation history, the information cannot be relied upon in determining the prospective employee's salary, unless required by law or collective bargaining agreement. The executive order does not prevent job applicants from volunteering their compensation history.

Information Disclosure Required
Executive Order No. 162 provides that all state contracts, agreements, and procurements issued and executed on or after June 1, 2017 must require contractors and subcontractors to provide workforce utilization reports that detail the job title and salary information for each employee performing work on the state contract. If the contractor cannot identify the individuals working directly on the state contract, the data must be provided for the contractor's entire workforce.

This data is in addition to the equal opportunity information state contractors must already submit in workforce utilization reports. State contractors and subcontractors will be required to submit the information to state agencies on a quarterly basis for all prime contracts having a value in excess of $25,000. For prime contracts with a value in excess of $100,000, the information must be reported on a monthly basis.

Governor Is On A Mission

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Governor Cuomo's executive orders follow his sweeping Women's Equality Act signed in 2015, which, among other things, strengthened pay equity protections in New York. The law prohibits employers from retaliating against employees who share wage information. It also eliminates the ability of employers to point to any other factor other than sex to justify pay disparities, instead requiring pay decisions to be based on legitimate reasons. The Women's Equality Act also increased damages and penalties for employers who underpay their employees because of gender, race, or ethnicity.

The Governor's executive orders continue the trend in New York to lead the charge in expanding protections for workers beyond those required under federal law. New York employers must be sure to comply with all state and local requirements, particularly those that differ from federal requirements.

For more information about these developments, contact any attorney in our New York City office at 212.899.9960, or your regular Fisher Phillips attorney.

This Legal Alert provides information about specific state executive orders. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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