



NYC Prohibits Past Pay Inquiries

Insights

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The New York City Council passed legislation yesterday that will prohibit employers from making inquiries regarding salary history during the hiring process, a measure aimed at addressing gender-based wage gaps. Under the new law, it will be an unlawful discriminatory practice to ask about the salary history of a job applicant, or rely on the salary history of an applicant in determining compensation, during the hiring process.

Mayor de Blasio, who issued an executive order banning city agencies from asking job applicants about their salary history in November 2016, is expected to sign the bill into law in short order. The legislation will take effect 180 days thereafter. **[Update: Mayor de Blasio signed the legislation on May 4, meaning the law will take effect on October 31, 2017.]** What do employers need to know about this new law?

Details About The New Law

The ban will extend not only to questions or statements put directly to job applicants, but also to any such inquiries made to their current or former employer or any search of publicly available records for the purpose of obtaining information about salary history. However, the ban will not extend to applicants for internal transfer or promotion with their current employer, or to public employees whose salaries are determined by collective bargaining agreements. Moreover, if job applicants voluntarily and without prompting disclose their salary history to prospective employers, that information may be considered when determining salary.

Pay Equity In Sights Of City Council

This law is the latest measure taken by state and local governments aimed at narrowing the wage gap between men and women. The New York City Council's Committee of Civil Rights' report on the legislation noted that women in New York State earn only 87% of what men make, with Hispanic, black, and Asian women experiencing wage gaps of 54%, 45%, and 37%, respectively, when compared to white men in New York City.

The legislation dovetails on the suite of Women's Equality legislation enacted in New York State in October 2015, which expanded protections for women in the workplace on a state level. One of those new laws, the Pay Equity Act, amended the state's equal pay law by narrowing the instances in which an employer can justify salary discrepancies between male and female employees, thereby increasing the burden on employers to justify wage differentials.

Additionally, the Pay Equity Act bars employers from prohibiting their employees from discussing or disclosing their wages. The Pay Equity Act also dramatically increased the penalties an employer faces for willful violations of equal pay law. Proposed legislation has been introduced on the state level to ban inquiries regarding salary history.

What Should New York City Employers Do?

New York City employers should take immediate steps to review their policies and practices to ensure compliance with the new legislation. Human resources personnel, and anyone involved in interviewing candidates, must be aware of the new prohibition on asking job applicants about salary history.

Additionally, employers should ensure their job applications do not include a request for an applicant to disclose their salary history. Employers should also consider implementing a process to document any instances where an applicant voluntarily discloses salary history.

Because many other states and municipalities have introduced similar legislation or are planning to do so in the near future, employers from across the country should keep a close watch for further developments.

For more information about how these changes will affect your workplace, contact any attorney in our [New York City office](#) at 212.899.9960, or your regular Fisher Phillips attorney.

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