



Sweeping Pay Equity Laws On The Way For New York Employers

Insights

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This past week was a busy one for New York State lawmakers. In addition to [passing game-changing legislation overhauling the state's discrimination laws](#), the New York State Senate and Assembly just passed two pay equity bills that will have a significant impact on all New York businesses.

The new legislation will amend the New York Labor Law to protect a greater number of employees against pay discrimination and prohibit employers from seeking salary history from prospective employees. Governor Andrew Cuomo has strongly advocated for both a statewide salary history ban as well as an expansion of the state's pay equity laws; he is expected sign these bills without delay. **[Ed. Note: As expected, the governor signed the pay equity bill on July 10.]** What do employers need to know about this new legislation?

Prohibiting Wage Differentials Based On Protected Class Status

In 2016, [New York passed the Achieve Pay Equity Act \(APEA\)](#), which ushered in significant changes to New York's equal pay law. While the APEA expanded pay equity protection for employees in New York well beyond the federal Equal Pay Act, such protections applied only to gender. As a result of the amendment, pay differentials will not only be prohibited based on an employee's gender, but also based on any of the protected classes under the New York State Human Rights Law. Specifically, this includes pay differentials based on age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, or any other employee or intern protected from discrimination pursuant to the New York State Human Rights Law.

Additionally, the latest legislation lessens an employee's burden in proving a claim for pay discrimination. Currently, in order to establish an equal pay violation, an employee must demonstrate that their job is substantially equal to the job of their higher-paid colleague; that is, the two jobs must require equal skill, effort, and responsibility, and must be performed under similar working conditions. Moving forward, however, employers will also be required to also ensure equal pay for "*substantially similar work*, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions."

The new law still acknowledges that pay differentials may exist based on non-discriminatory factors

such as seniority, merit, the quantity or quality of work, or a bona fide factor other than status within a protected class or classes (such as an employee's education, training or experience), so long as the factor is not based upon or derived from a protected class related differential in compensation and is job-related and consistent with business necessity. An employee can overcome this bona fide factor defense by showing that (1) the employer's practice causes a disparate impact on the basis of sex; (2) that alternative practices exist that would serve the same business purpose and not cause a disparate impact; and (3) the employer has refused to adopt the alternative practice.

[Ed. Note: This portion of the law will take effect on October 8, 2019.]

Ban On Salary History Inquiries

Currently, certain localities in New York (New York City, Suffolk County, Albany and Westchester County) have implemented laws prohibiting employers from inquiring about the salary history of job candidates or relying on salary history in determining the wages to offer a prospective employee. With the passage of legislation yesterday, a statewide salary history ban will soon be implemented, within 180 days after the bill becomes law. **[Ed. Note: The effective date of this portion of the law is now set as January 6, 2020.]**

Under the new law, New York employers will be prohibited from requesting that a job applicant or current employee provide them with their salary or wage history as a condition to be interviewed, as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion. Employers will also be prohibited from relying on the salary history of an applicant in determining whether to offer employment to that person or in determining what wages to offer them.

If an employee or prospective employee feels it is in their best interest to disclose their wage or salary history to a prospective employer or their employer, such as for purposes of negotiating wages or salary, the law does not prevent the employee from doing so, so long as they do so voluntarily and without prompting by the employer. An employer is only permitted to verify the salary history only if, at the time of making a job offer with compensation, the applicant responds to the offer by providing their prior salary history to support a wage higher than that being offered.

The law provides for a private right of action for alleged violations, allowing recovery of compensatory damages, injunctive relief and attorneys' fees to a prevailing plaintiff.

What's Next For Employers?

While the passage of this new legislation should not come as a surprise, New York employers will need to take immediate steps to comply with their new obligations once the law takes effect. In affording equal pay protections to all protected classes, New York will soon have one of the strongest equal pay laws in the country. You will also need to take steps to comply with the salary history ban, starting with removing all salary history inquiries from your job applications. Additionally, all human resources personnel, as well as any employees involved in the interviewing and hiring process, must be educated and trained on the new law as soon as possible in order to avoid violations.

over relations.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting New York employers, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [New York City office](#).

This Legal Alert provides an overview of a specific development related to a state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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