



June 2019

New York State Passes Salary History Ban

By Carolyn D. Richmond, Glenn S. Grindlinger and Bryn Goodman

New York State is poised to prohibit employers from relying on or inquiring about an applicant's or employee's wage or salary history.

An amendment recently passed by the state legislature would bar employers in New York from seeking wage or salary history information from an applicant, employee or from the applicant's former employer.

The amendment is intended to prevent employers from using salary history information as a condition of an offer for employment, continued employment or promotion. Gov. Andrew Cuomo is expected to sign the law, which will take effect 180 days later.

Businesses should make necessary plans to ensure that their hiring staff, interview practices and job application materials comply with the law's requirements.

Background

After Governor Cuomo signed an Executive Order in January 2017 requiring all New York State entities to adopt salary history blind hiring practices, further legislation on the issue seemed inevitable. As anticipated, New York State has now joined the ranks of other jurisdictions that have passed laws banning salary history inquiries, including Massachusetts, Oregon, Delaware, Philadelphia, Puerto Rico, [New York City](#) and [Suffolk](#), Westchester and Albany Counties in New York State. This legislation follows the New York

State legislature's recent trend of passing legislation intended to protect employees from discrimination, harassment and other unfair practices.

How the Law Affects Employers

While the salary history ban is relatively clear about prohibiting the use of salary history information regarding employment or promotion, the law does not clarify how and to what extent an employer can use a current employee's salary information for promotions. We assume that the prohibition is limited to inquiring about current employee's *prior* wage and salary information (related to past employment). Notably, an employer is only permitted to confirm wage or salary history after an offer of compensation is made and the employee responds to that offer by providing prior wage or salary information to support a negotiation for a higher wage or salary.

The law also prohibits refusal to hire or retaliation based on failure to provide wage or salary information and arms individuals with a private right of action. This means that an applicant or employee may bring a civil action for compensation for any damages sustained as a result of such violation. The court may also award injunctive relief as well as attorneys' fees to a prevailing plaintiff.

In light of this impending legislation, employers should train all employees involved in the interviewing and hiring process to be aware of the new requirements. Employers should also

review applications to ensure the removal of any questions that could “require” applicants to reveal prior compensation.

For more information about this Alert, please contact Carolyn D. Richmond at 212.878.7983 or crichmond@foxrothschild.com, Glenn S. Grindlinger at 212.905.2305 or ggrindlinger@foxrothschild.com, Bryn Goodman at 212.878.7975 or bgoodman@foxrothschild.com or any other member of Fox Rothschild’s Labor & Employment Department.

Attorney Advertisement

© 2019 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.
www.foxrothschild.com