

April 17, 2017

New York City Prohibits Inquiries Into Salary History

On April 5, 2017, the New York City Council amended the New York City Human Rights Law to prohibit employers, employment agencies, and any of their employees or agents from inquiring about the salary history of an applicant or relying on an applicant's salary history to determine the applicant's salary, benefits, or other compensation. For the purpose of this new law, "salary history" includes the applicant's current or prior wages, benefits, or other compensation.

The legislation restricts a variety of actions: employers may not question an applicant about salary history, make any statement to the applicant geared toward obtaining salary history, search public records or reports for the applicant's salary history, or question or make a statement to the applicant's current or prior employer (or any current or former employee or agent of said employer) to attempt to gather salary information.

There are, however, certain exceptions to this new rule. Employers and applicants may discuss the proposed salary or salary range of the position, the applicant's compensation expectations, and whether the applicant's resignation from his or her current position would cause the applicant to forfeit unvested equity or deferred compensation. Additionally, if the applicant voluntarily, and without prompting, discloses his or her salary history, the employer may verify this information and consider it when determining salary, benefits, and other compensation. Applicants may also be asked about objective measures of productivity, such as sales, revenue, or other production reports. This law does not apply to applicants for internal transfer or promotion; positions where salary disclosure is authorized or required by federal, state, or local law; and public employee positions for which salary, benefits, and compensation are determined by collective bargaining. Although verification of non-salary information (including by a background check) is permissible, if the background check or employment verification discloses

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the applicant's salary history, the employer may not rely on that disclosure in determining salary, benefits, or compensation.

This legislation has not yet been signed by Mayor de Blasio; but his signature is expected, particularly given that he enacted a similar prohibition for city agencies last year. The law will take effect 180 days after his signature. In the interim, employers should examine their hiring practices, including employment applications, to remove questions relating to salary history. Because this law also applies to employment agencies and employees and agents thereof, employers should not only ensure that their individual employees are trained as to the permissible scope of compensation discussions, but also that any recruiters the employer works with comply with these requirements as well.

If you have any questions about the new law or would like detailed information about the law to ensure compliance, please contact Tina Grimshaw at (212) 758-7792 or any other attorney at the Firm.

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