

Client Alert

May 2017

New York City Council Approves Law Prohibiting Employer Inquiries Into Applicants' Salary History

On April 5, 2017, the New York City Council approved a bill that will prohibit employers in New York City from making inquiries into prospective employees' salary history. If signed by Mayor de Blasio, it will become effective 180 days after signature. If enacted, an employer's inquiry into an applicant's salary history or use of an applicant's salary history to determine compensation will become evidence of discrimination.

This proposed law was designed to address gender-based wage gaps, and is part of a trend in recent wage equity legislation that is being passed around the country. In 2016, Mayor de Blasio prohibited New York City public agencies from asking prospective employees to disclose their prior salaries. Also in 2016, New York State adopted the Achieve Pay Equity law (amending the Equal Pay Act) which made it more difficult for employers to avoid liability for pay disparities. Similar equal pay laws have been enacted in California, Maryland and Massachusetts.

The new bill prohibits employers from the following:

- Directly asking applicants for their past salary history.
- Asking former employers or references for the prospective employee's salary history.

The New York City law does NOT apply to the following:

- Internal candidates who are applying for a transfer or a promotion with their current employer.
- Public employees whose salaries are determined by collective bargaining agreements.
- Voluntary disclosures by the job applicant to the prospective employers of the applicant's salary history.

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Employment Practices

How to prepare for the new law:

- Review existing policies and practices to ensure compliance with the new legislation.
- Review job applications to ensure there are no requests for salary history.
- Implement a process to document *voluntary* disclosure of salary history by an applicant.

Finally, consider conducting a pay equity audit of your workforce, in order to ensure that you are in compliance with all current laws relating to pay equity. A pay equity audit includes a complete review of your pay practices in conjunction with legal counsel under the attorney-client privilege. As more federal, state and local laws relating to pay equity go into effect, ensuring that your business is in compliance will help minimize potential penalties and costly litigation.

We are following the bill and will advise of the effective date assuming Mayor de Blasio signs the bill. In the meantime, for more information regarding the New York City regulation or on any other employment matter, please contact the Olshan attorney with whom you regularly work or either of the attorneys listed below.

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