



Connecting lawyers, nonprofits, and communities

August 2, 2017

HAPPY HALLOWEEN! NYC BANS APPLICANT SALARY HISTORY INQUIRIES EFFECTIVE 10.31.17

On May 4, 2017, New York City Mayor Bill de Blasio signed into law a bill prohibiting employers from inquiring into an applicant's salary history. The law will take effect on October 31, 2017; *however, employers must start to review their application materials and processes now to make sure that they will be compliance by the law's effective date.* The new law's main purpose is to prohibit employers from asking about and relying on an applicant's salary history when determining the applicant's new salary, benefits, and other compensation. Advocates for the law and the New York City Mayor have hailed the law as an effort to reduce the wage gap and encourage pay equity between men and women.

The legislation is part of a growing trend among states and cities across the country (Massachusetts, California, Philadelphia, and Puerto Rico) that are making strides towards pay equity; though the Philadelphia ordinance is being challenged on First Amendment and Due Process grounds and is currently stayed until a motion for preliminary injunction is decided. There is also a pending bill in the Pennsylvania State Senate that, if passed, would preempt the Philadelphia ordinance and make it unlawful.

Prohibitions

The new law makes it unlawful for an employer to inquire into the salary history of an applicant for employment. The law also prohibits an employer's reliance on salary history when determining salary, benefits, or other compensation during the hiring process, which includes negotiation of an employment contract. However, the law does not prevent employers from informing applicants about the proposed or anticipated salary or salary range for the position. "Inquire" is defined as making any question or statement with the purpose obtaining salary history to an applicant, the applicant's current or prior employer, or an applicant's current or former co-worker. "Inquire" also includes conducting a search of public records or reports for the purpose of obtaining the applicant's salary history. An inquiry may be written or otherwise. The law defines "salary history" as an applicant's current or prior wage, benefits, or other compensation. However, salary history does not include objective measures of the applicant's performance such as revenue, sales, or other productivity reports.

Exceptions

Despite the prohibition on inquiry and reliance, an employer may ask the applicant's expected salary, benefits, or compensation, including, for instance, unvested equity or deferred compensation the applicant is forfeiting as a result of leaving his/her current job, as long as the employer does not ask about salary history. In addition, if an applicant *voluntarily* discloses his/her salary history, the employer may consider that information in determining the applicant's salary, benefits, and other compensation.

The law does not apply when disclosure of an applicant's salary history is authorized or required by federal, state, or local law; when the applicant is an employee receiving a promotion or is an internal hire; when salary history is obtained through verification of non-salary related information or when conducting a background check, but an employer may not rely on salary information obtained during a background check when determining the new salary, benefits, or other compensation; or when the applicant is a public employee whose salary is determined through collective bargaining.

Enforcement

The New York City Commission on Human Rights is tasked with enforcing the law and will investigate violation complaints. The Commission may impose civil penalties of up to \$250,000 for an "intentional malicious violation." The Commission also has authority to create further rules related to the law.

What to do?

Nonprofit organizations should review their employment applications, interview procedures, and employment verification policies to exclude any questions or statements related to salary history. Organizations should also train HR and recruiting personnel on the new law to prevent them from asking questions or making statements about salary history, or from conducting internet searches for this information. In particular, nonprofit organizations should remove all references to salary history from:

- job applications (paper and online)
- phone screens
- interview templates
- third party background checks
- hiring manager training materials
- compensation guidelines
- disposition notes/codes

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to develop and provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.