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New York State Bans Inquiries Into Salary History

Effective January 6, 2020, all employers in New York State are prohibited from asking about or relying on the salary history of an applicant or current employee to determine whether to make a job offer and/or a person's starting salary. While the statute does not define "applicant," this follows an earlier 2017 ban, which prohibited all New York State government agencies and departments from requesting a salary history from prospective public employees until after an offer of employment is extended.

This new law, which Governor Cuomo signed into effect on July 10, 2019, prohibits employers from asking for salary information as a condition: (1) to be interviewed; (2) of an offer of employment; (3) for a promotion; or (4) for continued employment. Under the new law, employers are prohibited from seeking salary history information from an applicant's previous employers when calling to verify references.

While the new law does not prohibit employees from voluntarily disclosing their salary history or using same as a basis to negotiate a higher starting salary, once an employee discloses her salary history, the employer is permitted only to verify that information and can only do so *after* an offer of employment is extended. In other words, even if an employee voluntarily discloses her salary history, an employer cannot deem such disclosure as a "waiver" by the employee and seek additional salary information that the prospective employee did not offer. The law also prohibits employers from retaliating against any prospective employee based on her salary history or for refusing to voluntarily disclose her salary history information.

With the enactment of this law, New York State will follow multiple other states and localities, including New York City and Suffolk and Albany Counties, in banning inquiries into a prospective employee's salary history. While the New York State ban closely mirrors the existing bans in New York City and the surrounding counties in most aspects, there are slight differences. For example, New York State does not prohibit employers from conducting a search of publicly available records to verify an applicant's salary history while New York City does. Moreover, the New York State ban, similar to that of Albany County, applies to both prospective applicants and current employees seeking a new position within the company while the law in localities such as New York City and Suffolk County applies to new applicants only.

Like New York City and Suffolk and Albany Counties, the New York State ban provides for a private right of action. Unlike New York City or Suffolk and Albany Counties, which require applicants to file a claim with that locality's Commission of Human Rights, under New York State law, an applicant may pursue litigation in state court to recover damages sustained in addition to injunctive relief and attorneys' fees.

In preparation for the new law, employers should remove any salary history inquiries from job applications as well as be mindful to avoid such questions during interviews. Instead, any salary discussion should be strictly limited to the prospective employee's salary expectations. Additionally, when providing references, employers must exclude a former employee's salary history information unless specifically requested otherwise by that employee.

For further information regarding the new law, its requirements, or for assistance in revising applications, interview questions, and/or employment policies, employers are encouraged to contact the author, Phuong V. Nguyen, Esq. of the Labor & Employment Group at Meltzer, Lippe, Goldstein & Breitstone, LLP, at pnguyen@meltzerlippe.com or any of our sixteen (16) Labor & Employment attorneys. See <https://www.meltzerlippe.com/attorneys/>.