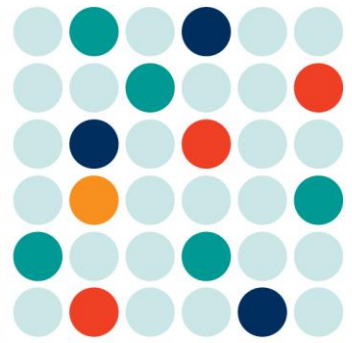


# LEGAL UPDATE

May 2017

By: Pryor Cashman's Labor & Employment Group



## NYC BANS EMPLOYERS FROM ASKING ABOUT SALARY HISTORY

On May 4, 2017, New York City enacted a new law, set to take effect on October 31, 2017, which prohibits employers with four or more employees from asking about a job applicant's current or prior compensation. Specifically, the law makes it a discriminatory employment practice for an employer to: (1) inquire about the salary history of a job applicant; or (2) rely on the salary history of an applicant when determining the applicant's salary, benefits or other compensation during the hiring process, unless the applicant "voluntarily and without prompting" discloses his or her prior salary information. Salary history includes an applicant's current or prior wages, benefits or other compensation. Furthermore, an employer may not conduct a search of publicly available records or reports to ascertain the applicant's salary history.

This new law does not apply to (1) internal job applicants seeking a transfer or promotion with their current employer, or (2) public employee positions for which salary, benefits or other compensation are determined under a collective bargaining agreement.

Employers may ask a prospective employee about his or her "expectations" with respect to salary, benefits and other compensation. An employer may also ask about unvested equity or deferred compensation which the job applicant would forfeit or have cancelled by virtue of the applicant's resignation from his or her current employer.

In addition, employers may still conduct background checks of job applicants. However, if the background check discloses an applicant's salary history, the employer may not rely on such history for purposes of determining an applicant's compensation.

As a practical matter, in New York City, background checks should not be conducted until after the applicant has been given a conditional offer of employment, given that the New York City Fair Chance Act makes it illegal for most employers to ask about an applicant's criminal record until an offer of employment has been made.

Applicants may file civil lawsuits against employers for alleged violations of the law. Additionally, the New York City Commission on Human Rights, charged with enforcing the law, may impose civil penalties of up to \$125,000 for an unintentional violation, and up to \$250,000 for a willful, wanton or malicious violation.

The intended purpose of the law is to eliminate pay inequality linked to race and gender. Proponents of the law argue that asking for salary history results in the perpetuation of a cycle of wage discrimination, while critics believe the law will have the opposite effect because employers and employees will have to rely more on salary negotiations.

### Conclusion

Employers should consult with counsel to ensure compliance with this significant development in the law, which will likely require changes to their hiring practices and procedures. Please feel free to reach out to Pryor Cashman with any questions.

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