

Employment Law eAlert

Don't Ask! Salary History Is Now Off Limits

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Delaware has passed a law limiting an employer's ability to inquire about a candidate's compensation history. The law will be the first in the country to take effect in December 2017, giving employers six months to adjust their hiring practices. Here's what Delaware employers need to know.

The Background of the Bill

The law is intended to address pay disparities between men and women. Because women earn 78 cents to every dollar earned by their male counterparts, the pay gap is perpetuated when women are paid based on their most recent salary instead being paid based on a range set for the particular position. Thus, so goes the theory, the new law will level the playing field.

The Law

Governor John Carney signed the law on June 14, 2017. The law prohibits employers from asking about an applicant's salary history or using salary history as a screening criteria. The candidate may volunteer the information and the law explicitly permits discussion and negotiation of compensation. And, once an offer of employment (including the terms of compensation) has been extended and accepted, the employer may then inquire about the salary history but may not use that information for compensation decisions.

The law does provide a helpful carve-out for outside recruiters. If an employer contracts with a recruiter and the recruiter violates the law, the employer will not be liable if it can show that it informed the recruiter of the law's requirements and instructed the recruiter to comply with them.

Employers who fail to comply can be sued by the employee or

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prosecuted by the Department of Labor. A first violation will result in a penalty of between \$1,000 and \$5,000. Any subsequent violation will result in a penalty of between \$5,000 and \$10,000.

Tips for Compliance

Delaware employers should act now to prepare for the implementation of the law. Here are a few suggestions:

- Update job-application forms, removing any questions relating to compensation history;
- Notify, in writing, any outside recruiter of the law and require the recruiter to comply;
- Inform all employees involved in interviewing and/or hiring of the new law and make absolutely clear that salary history is off limits.

Young Conaway's Labor and Employment Law attorneys are available to answer any questions you may have about the new law or best practices for compliance.

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