

New York City Issues Guidance On Upcoming Salary Prohibitions

Effective October 31, 2017, New York City employers generally may not inquire about or rely upon a job applicant's salary history in making employment decisions. The New York City Commission on Human Rights has released an Employer Fact Sheet and a Job Applicant Fact Sheet to assist employers and employees with understanding the law.

The following are some key highlights from the fact sheet for employers:

- The law applies to all employers in New York City, regardless of size. Employers with as few as one employee must comply with the law.
- The law also is broad in regards to protection. That is, most applicants for new employment in New York City will be covered (*e.g.*, full-time, part-time, internship, and independent contractors without employees).
- However, the law does not apply to job applicants for internal transfer or promotion with their current employer and applicants for positions with public employers for which compensation is set pursuant to a collective bargaining agreement.
- In addition to prohibiting employers from inquiring about salary history on

job applications or through prior employers, the law prohibits employers from searching public records for such information.

- Furthermore, employers may not rely on any earnings or benefits information uncovered accidentally (*e.g.*, while verifying non-salary information, such as work history, responsibilities, or achievements).
- Employers are still free to make statements about the anticipated or job applicants' expected salary, salary range, bonus, and benefits for a position.

If the job applicant makes a voluntary and unprompted disclosure of his or her salary history to the prospective employer, the employer may consider salary history in determining the prospective employee's salary, benefits, and other compensation, and verify the applicant's salary history. Further, employers are not prohibited from asking job applicants about objective indicators of work productivity, such as revenue, sales, production reports, profits generated, or books of business.

The Commission will investigate complaints and employers may be required to pay damages or a fine, and/or be subject to mandated training or posting requirements.

Prior to the effective date, New York City employers should review and modify their employment applications, interview protocols, and verification policies to exclude inquiries that relate to a job applicant's salary history.

Please contact Jackson Lewis with any questions regarding these developments, compliance, or government relations.

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