

Money Isn't Everything: NYC Bars Employer Inquiry Into Salary Histories

On May 4, 2017, Mayor Bill de Blasio signed a new law enacted by the City Council that restricts New York City employers from inquiring about or relying on a prospective employee's salary history. Under the law, employers cannot ask a job applicant or an applicant's current or prior employer for information about the applicant's salary history. Nor can the employer conduct a search of publicly available records or reports for information about salary history.

While the law prohibits inquiries about salary *history*, employers may engage in discussion with the applicant about the applicant's *expectations* with respect to salary, benefits, and other compensation. Employers may also engage with an applicant about unvested equity or deferred compensation that the applicant may have to forfeit if the applicant resigns from his or her current position.

Additionally, if an applicant voluntarily (and without prompting) discloses his or her salary history, the prospective employer may consider that salary history when determining its offer of compensation and benefits to the applicant. Further, once salary history has been volunteered by an applicant, the prospective employer is permitted to verify that salary history.

There are several situations in which the law does not apply. The law does not apply when the employer is authorized pursuant to another law to obtain the salary history of an applicant. The law also does not apply to applicants applying for internal transfers or promotions with their current employer. Finally, the law does not apply to public employee positions for which salary, benefits, and other compensation are determined pursuant to collective bargaining.

New York City employers remain free to conduct background checks to the extent authorized by law. However, if a background check discloses an applicant's salary history, this information may not be relied upon by the employer for purposes of determining the salary, benefits, or other compensation of the applicant.

City Council committees studying pay issues concluded that there is a gender pay gap between men and women; this conclusion was the City Council's justification for the new law. The committees found that prohibiting employers from learning salary histories is a means of addressing the "anchoring effect" that salary histories can have on this pay gap; initially lower salaries may follow women throughout their careers. This new law follows the passage of a similar law in Massachusetts last year.

The law will go into effect on November 1, 2017. To ensure compliance with the new law, New York City employers should review their job application materials and make sure that they do not ask job applicants to state their salary histories. New York City employers should also instruct those that are involved in the hiring process to not ask applicants about their salary histories, and to not make outside inquiries about applicants' salary histories.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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