

CLIENT ALERT

Ban on Salary Inquiries in New York City – Effective October 31, 2017

October 25, 2017

AUTHORS

Michael A. Katz | Andrew Spital | Christine N. Cea

Beginning October 31, 2017, with limited exceptions, employers in New York City will be prohibited from inquiring into a job applicant's salary history and from relying on salary history in setting compensation.¹ Signed into law by Mayor Bill de Blasio on May 4, 2017, the new law is intended to reduce gender- and race-based pay inequity, and a violation may result in a fine of up to \$250,000. All employers and employment agencies with employees or operations in New York City should ensure that their hiring personnel are fully trained on how to comply with the new law.

What the Law Prohibits

Starting on October 31, employers and employment agencies may not ask a job applicant for a position in New York City about his or her salary history, which includes current and prior wages, benefits or other compensation. This prohibition not only applies to communications with the applicant, but also bars employers from seeking this information from current or previous employers or from publicly available records. Further, unless voluntarily disclosed by the applicant, employers and employment agencies also may not rely on salary history in setting compensation to the extent such information is otherwise discovered.

¹ Other jurisdictions, including Delaware, California, Oregon, Massachusetts and Puerto Rico, have adopted statutes with similar restrictions. Philadelphia has also passed a similar law, although the Chamber of Commerce of Greater Philadelphia is challenging it in Court.

Ban on Salary Inquiries in New York City – Effective October 31, 2017

The ban does not apply to (i) individuals pursuing an internal transfer or promotion, (ii) public employee positions where the salary is determined pursuant to collective bargaining procedures, or (iii) inquiries in accordance with any federal, state or local law that specifically authorizes the disclosure or verification of salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee's compensation.

What the Law Permits

The law contains two important exceptions. First, it specifically allows employers and employment agencies to “engage in discussion with the applicant about their expectations with respect to salary, benefits and other compensation.” In other words, employers can discuss salary expectations for the role generally in the interview process, they just cannot ask the applicant about his or her salary history. Similarly, the law does not prohibit employers from informing the applicant about the position's proposed or anticipated salary or salary range. Nor does it prohibit inquiry into objective measures of past productivity such as revenue, sales or other production reports, or into unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from his or her current employer.

Second, employers may consider salary history in setting compensation if the applicant “voluntarily and without prompting” discloses such information. Before taking prior salary history into account under this exception, employers should be certain that the disclosure of salary history was truly at the applicant's own direction and was not in any way prompted or encouraged by the prospective employer.

Enforcement and Fines

Individuals may file a complaint with the New York City Commission of Human Rights if they believe that a prospective employer or employment agency improperly asked questions regarding salary history or that a prospective employer or employment agency relied on salary history in setting compensation. The Commission may impose a fine of up to \$150,000 for a violation, or up to \$250,000 for a violation that was “willful, wanton or malicious.” Alternatively, an individual may bring suit in court and receive the full range of relief available under the New York City Human Rights Law, including back pay, compensatory damages, punitive damages and attorneys' fees.

How Employers Should Prepare

Employers and employment agencies hiring in New York City should ensure that any employees engaged in the hiring or interview process are educated about the new law. Additionally, hiring practices, especially those surrounding interview questions and how compensation is determined, should be reviewed for compliance with the law. To the extent salary history is discussed or considered pursuant to one of the law's exceptions, the circumstances should be well-documented, and employers should try to limit the frequency with which such exceptions are invoked.

Ban on Salary Inquiries in New York City – Effective October 31, 2017

If you have any questions regarding this client alert, please contact the following attorneys or the attorney with whom you regularly work.

Michael A. Katz

212 728 8204

mkatz@willkie.com

Andrew Spital

212 728 8756

aspital@willkie.com

Christine N. Cea

212 728 8521

ccea@willkie.com

Copyright © 2017 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.