

New York City Council Approves Legislation Limiting Prospective Employers' Ability to Obtain and Use Salary History Information

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The New York City Council has approved legislation prohibiting employers from inquiring about, relying upon, and verifying a job applicant's salary history. Advocates of the legislation ([Int. 1253-A](#)), approved on April 5, maintain that it will contribute to gender pay equity and reduce the likelihood that women will be prejudiced by prior salary levels.

The bill is similar to recently enacted laws in other jurisdictions, including Massachusetts, Puerto Rico, and Philadelphia. (See our articles, [Massachusetts Governor Signs Tough Pay Equity Bill](#), [Puerto Rico Enacts Equal Pay Law, Prohibits Employers from Inquiring about Past Salary History](#), and [Philadelphia to Restrict Wage History in Hiring Decisions](#).)

Mayor Bill de Blasio is expected to sign the bill soon. Int. 1253-A will be effective 180 days after signing.

Employer Prohibition on Inquiring About and Relying on Salary History Information
Int. 1253-A prohibits employers from inquiring about a prospective employee's salary history during all stages of the employment process.

The obligations imposed by Int. 1253-A would prohibit an employer, employment agency, employee, or agent from:

1. Inquiring about the salary history of a job applicant; and/or
2. Relying on the salary history of a job applicant when determining his or her salary amount at any stage in the employment process, including when negotiating a contract.

Int. 1253-A defines "to inquire" as "communicate any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history."

"Salary history" includes the applicant's current or prior wage, benefits, or other compensation. It does not include any objective measure of the applicant's productivity, such as revenue, sales, or other production reports.

Exceptions

Employers should take note of several significant exceptions and caveats.

First, if the applicant makes an unprompted and willing disclosure of his or her salary history to the prospective employer, an employer is permitted to consider salary history in determining a prospective employee's salary, benefits, and other compensation, and verify a job applicant's salary history.

Second, an employer, without inquiring about salary history, also is permitted to discuss salary, benefits, and other compensation expectations with the applicant, as well as any unvested equity or deferred compensation the applicant would forfeit or have cancelled by resigning his or her current employment. Should an employer's attempt to verify an applicant's non-salary-related information or conduct a background check result in disclosure of the applicant's salary history, the employer is prohibited from relying on the salary information during the hiring process and contract negotiation stages when setting the salary, benefits, or other compensation of the applicant.

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Further, Int. 1253-A does not apply to:

1. New York City employers acting pursuant to any federal, state, or local law authorizing the disclosure or verification of salary history, or requiring knowledge of salary history for employment purposes;
2. current employees applying for an internal promotion or transfer; or
3. public employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established in collective bargaining.

Suggested Employer Actions

In anticipation of 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.

Other Council Activity

New York employers should monitor progress of a significant employment legislation involving predictable scheduling and related issues that is before the Council. (For further information, see our article, [New York City Council Seeks Major Workplace Reforms for Fast Food, Retail Workers.](#)) The Council held a hearing on these proposals earlier this year.

While not employment-based, another proposed legislation relevant to New York employers would increase the minimum threshold for application of the Commercial Rent Tax, which applies to certain businesses below 96th Street in Manhattan.

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