

Salary History Ban Arrives in New York's Suffolk County

By Jeffrey W. Brecher, Susan M. Corcoran, Richard I. Greenberg and Timothy J. Domanick

November 30, 2018

New York's Suffolk County is the latest local jurisdiction to adopt legislation prohibiting employers from asking about the prior salary histories of prospective employees. The salary history ban amends the Suffolk County Human Rights Law, which defines an employer as persons or entities that employ at least four employees. The ban goes into effect on June 30, 2019.

The Suffolk County Legislature passed the measure, which was sponsored by County Executive Steve Bellone, by a vote of 17-0 on November 20, 2018.

The stated legislative intent of the bill is to reduce pay inequity for women and minorities. According to the New York State [Department of Labor](#), women in Suffolk County make 78.1 percent of what their male counterparts earn, compared with an average of 86.8 percent statewide.

While New York State has not enacted a salary history ban, other localities in the state that have passed salary history ban laws include [New York City](#), [Westchester County](#), and [Albany County](#). The New York State Assembly passed what would have been a statewide ban on April 16, 2018, but the companion bill did not move in the Senate. A statewide salary history ban has a better chance of becoming law in 2019 with a fully Democratic Party-controlled legislature.

Key Provisions

Under the Suffolk County legislation, an employer, employment agency, employee, or agent thereof may not:

1. Inquire, whether in any form of application or otherwise, about a job applicant's wage or salary history, including but not limited to, compensation and benefits. For purposes of this subdivision, "to inquire" means to ask an applicant or former employer orally, or in writing, or otherwise or to conduct a search of publicly available records or reports.
2. Rely on the salary history of an applicant for employment in determining the wage or salary amount for such applicant at any stage in the employment process, including at offer or contract.

Suffolk County expressly excludes any actions taken by an employer, employment agency, employee, or agent thereof that is (1) pursuant to any federal, state, or local law that requires the disclosure or verification of salary for employment purposes or (2) pursuant to a collective bargaining agreement.

Additional Exclusions under New York City Law

Significant exceptions in New York City's law, which was adopted in 2017, are not in Suffolk County's legislation.

For example, in New York City, if an applicant makes an unprompted and willing 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. The employer also may verify the applicant's salary history in this scenario.

Further, the New York City ban excepts current employees applying for an internal promotion or transfer, as the information is known to the employer. Suffolk County does not address this type of scenario.

The Suffolk County law also fails to give guidance about salary discussions. The New York City law allows an employer, without inquiring about salary history, to discuss with the applicant salary, benefits, and other compensation expectations, as well as any unvested equity or deferred compensation the applicant would forfeit or have cancelled by resigning his or her current employment.

Meet the Authors



[Jeffrey W. Brecher](#)

Principal
New York Metro
Long Island 631-247-4652
Email



[Susan M. Corcoran](#)

Principal
New York Metro
White Plains 914-872-6871
Email



[Richard I. Greenberg](#)

Principal
New York Metro
New York City 212-545-4080
Email

Enforcement

Individuals alleging violations of Suffolk's Human Rights Law may file a complaint with the Suffolk County Human Rights Commission. If they are not satisfied with the administrative result, then they may proceed to court.

Damages available under the County law include compensatory damages to the individual, payment to the County general fund, and civil fines and penalties in an amount not to exceed \$50,000 (\$100,000 if the violation is found to be willful, wanton, or malicious).

For cases of employment discrimination, where the employer has fewer than 50 employees, civil fines or penalties may be paid in reasonable installments as deemed by the Commission. Such installments would require the payment of reasonable interest and may not last more than three years.

Next Steps

Suffolk County employers and employee agencies should take steps now to update their pre-employment practices to comply with the new local law and other applicable New York pay equity initiatives. Employers and employment agencies should ensure that they do not affirmatively engage in any discussions about compensation history during the pre-offer stage, including by asking for such information on an application form. In addition, employers should review their reference-checking procedures to ensure salary history is not typically obtained.

New York State and its local jurisdictions likely will continue to consider salary history ban legislation. Therefore, employers should stay alert for additional legislative efforts on this topic.

Jackson Lewis attorneys are available to answer inquiries regarding this new law and assist employers in achieving compliance with its requirements.

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Timothy J. Domanick

Principal
New York Metro
Long Island 631-247-0404
Email