

Localities and the Salary History Ban: Next Stop, Westchester County, New York

By Susan M. Corcoran, Richard I. Greenberg, Thomas L. Petriccione,

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Meet the Authors



Susan M. Corcoran

(She/Her)

Principal

(914) 872-6871

Susan.Corcoran@jacksonlewis.com



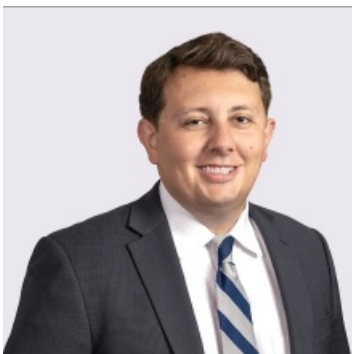
Richard I. Greenberg

(Rich)

Principal

(212) 545-4080

Richard.Greenberg@jacksonlewis.com



New York's Westchester County is the latest locality to adopt legislation prohibiting employers from asking prior salary histories of a prospective employee.

On Equal Pay Day, April 10, 2018, Westchester County Executive George Latimer signed legislation with the stated legislative intent of preventing the perpetuation of the gender wage gap, as well as of assisting older workers and those returning to the workforce after a long hiatus.

Westchester County's salary history ban goes into effect on *July 9, 2018*. The law amends the Westchester Human Rights Law, which covers persons who employ at least four employees, except if at least two-thirds of the employer's staff is family.

While New York State has not yet enacted similar legislation, other New York localities that have passed salary history ban laws include [New York City](#) and [Albany County](#). In addition, in early-2017, Governor Andrew Cuomo signed an [executive order](#) prohibiting state agencies from making pre-employment offer inquiries about a candidate's prior or current salary.

Key Provisions

Under the Westchester County salary ban legislation, an employer, employment agency, or labor organization, and any agent thereof cannot:

1. Unless voluntarily disclosed by the prospective employee to support a higher wage than offered by the employer, rely upon wage history received from any current or former employer of the individual to determine the wages for such individual;
2. Require, orally or in writing, as a condition of being interviewed, as a condition of being considered for an offer of employment, or as a condition of employment, that a prospective employee disclose information about the employee's own wages from any current or former employer. If the prospective employee had disclosed wage information to support a wage higher than offered by the employer, the employer may confirm prior wage information post-offer, so long as the employer has the prospective employee's prior written authorization to do so; and
3. Retaliate against someone for exercising his or her rights under this law, including opposing any act or practice. In addition, an employer may not refuse to hire or otherwise retaliate against an employee or prospective employee based upon prior wage or salary history.

Enforcement

Individuals alleging violations of Westchester's Human Rights Law may file a complaint with the Westchester County Commission on Human Rights, the agency

Thomas L. Petriccione

Associate

914-872-6927

Thomas.Petriccione@jacksonlewis.com

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with exclusive jurisdiction over such claims.

An individual may file a complaint against an employer or employment agency, for example, or an agent thereof within one year of the alleged discriminatory conduct. Significantly, complainants filing complaints with the County Commission must waive their right to file a complaint based upon the same transaction and occurrence with the State Division of Human Rights, any federal civil rights agencies (including the Equal Employment Opportunity Commission), or any other local commission on human rights.

Damages available under the County law include reinstatement, back pay, unlimited compensatory damages, costs, reasonable attorney's fees, and capped punitive damages (\$10,000 per aggrieved individual).

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

Local jurisdictions likely will continue to consider salary history ban legislation, both in New York State and across the nation. Therefore, employers should stay alert for additional new legislation.

Please contact a Jackson Lewis attorney if you have any questions.

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