

Guidance on New York's Ban on Salary Inquiries Issued

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New York state has issued guidance on its new law barring employers' direct and indirect inquiries about an employee's salary history that became effective on January 6, 2020. For New York City employers, the law must be read in conjunction with similar legislation already in effect.

The New York state law prohibits employers from requesting or relying on the wage or salary history of an applicant in determining whether to offer an interview or employment or in arriving at the amount of salary to be offered. (For more details, see our article, [New York Adopts Laws Aimed at Combating Salary Inequality and Race Discrimination.](#))

The guidance issued by the state highlights and clarifies certain points, including the following:

- The law applies to all public and private employers in the state, including New York City and public authorities.
- The law does not apply to bona fide independent contractors, freelance workers, or other contract workers, unless they perform work through an employment agency.
- The law applies to all positions that will be based primarily in the state, even if the interview process takes place virtually, by telephone, or in another state. This includes for part-time, seasonal, and temporary workers, regardless of their immigration status.
- A general exception to the law exists for employers required to obtain salary history information pursuant to federal, state, or local law in effect as of January 6, 2020.
- Salary history information includes compensation and benefits.
- Employers are barred from seeking to obtain salary history information from sources other than the applicant, such as a former employer.
- Employers may ask for an applicant's salary expectations for the position.
- The law applies to current employees as it relates to those interviewing or being considered for a promotion, but employers may consider information already in the employer's possession, such as using a current employee's existing salary to calculate a raise.
- Employment applications should not include questions seeking an applicant's current or past salary, unless required by law. An employer may not pose an "optional" salary history question on a job application seeking a voluntary response.
- Employers are encouraged to consider proactively stating in job postings that the employer does not seek salary history information from applicants.
- An applicant may voluntarily disclose salary history information if it is done

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without the prospective employer's prompting. If the applicant voluntarily discloses information without prompting, the employer may factor in the voluntarily disclosed information when determining the salary for that applicant.

- While employers may seek to confirm salary history information voluntarily disclosed by the applicant without prompting, employers may not rely on prior salary to justify a pay difference between employees of different or various protected classes performing substantially similar work.
- The law does not require employers to post or set a pay scale for an open position.

The guidance also confirms protections against retaliation, provides details to applicants on reporting perceived violations of the law to the New York State Department of Labor's Division of Labor Standards, and confirms the ability to bring a private right of action.

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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