

# EMPLOYER ALERT

## Coming Soon . . . New York City Employers May Not Ask About Salary History

*By Sara Kula, Employment Counsel at DelBello Donnellan Weingarten Wise & Wiederkehr, LLP*

In October 2015, New York City employers were banned from asking about applicants' criminal conviction history during the application and interview process. This required many employers to update their employment applications, interview practices and background check process.

Two years later, beginning in October 2017, employers will be banned from inquiring about applicants' salary history, requiring employers to revisit their hiring forms, policies and practices once more.

A New York City bill, signed by Mayor de Blasio, will amend the New York City Human Rights Law to make it an unlawful discriminatory practice for an employer to inquire about or rely on an applicants' salary history information. The purpose of the law is to help break the cycle of gender pay equity, which is believed to be perpetuated, in part, by reliance on prior salary levels.

For purposes of the law, "salary history" means an 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. Employers may still discuss with the applicant what the applicant's expectations are with respect to salary, benefits and other compensation, and what the employer is offering in those regards.

Employers may not, however, make any inquiries to an applicant for the purpose of finding out the applicant's salary history, and may not make such inquiries to any of the applicant's current or former employers. Employers are also prohibited from performing searches of publicly available records or reports for the purpose of obtaining an applicant's salary history.

If an employer is otherwise aware of an applicant's salary history, the employer may not rely on the information in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of any contract, unless the salary history was disclosed by the applicant voluntarily and without prompting.

Violations of this law can result in civil penalties of up to \$125,000, or \$250,000 where the violation is found to be willful, wanton or malicious. Individuals can also pursue claims against a company for violation of the law, seeking damages such as back-pay, emotional distress damages and attorneys' fees.

To prepare for this new law, employers should review their application forms, reference check processes, and other interview and hiring practices to determine what modifications are required. Any employees involved in the interview process must also be trained to avoid any direct or indirect inquiries into prohibited salary history information. Companies should also consider a plan to document an applicant's voluntary disclosure of salary history to avoid any claims that the information was somehow prompted by the employer.

For more information about this law or other employment-related issues, contact Sara Kula at [sdk@ddw-law.com](mailto:sdk@ddw-law.com) or 914-607-3113

**DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP**  
WHITE PLAINS, NEW YORK 10601

MAY 2017