



May 2017

New York City to Prohibit Employer Inquiries into Salary History

On May 4, 2017, New York City amended its Human Rights Law (NYCHRL) to join the growing number of municipalities that prohibit employers from inquiring about applicants' wage history. Ostensibly designed to "help break the cycle of gender pay inequity[,]," this new restriction may open employers to yet another theory the plaintiffs' bar can seek to exploit.

Beginning Oct. 31, 2017, it will be "an unlawful discriminatory practice" under the NYCHRL for an employer (i) to inquire about the salary history of an applicant, or (ii) to rely on the salary history of an applicant in determining compensation during the hiring process. The term "inquire" is broadly defined, and includes not only asking an applicant what he or she has been paid by prior or current employers, but also searching public records to obtain that information. The law does *not* prohibit (i) inquiries into objective productivity metrics "such as revenue, sales, or other production reports," (ii) discussing with an applicant "their expectations with respect to salary, benefits and other compensation," or (iii) verifying and considering an applicant's salary history where he or she "voluntarily and without prompting discloses" it.

Importantly, this new prohibition is to be "an unlawful discriminatory practice" under the NYCHRL. Thus, it will be enforceable through private suit, without any administrative exhaustion requirements. Moreover, plaintiffs will be able to seek a full panoply of remedies, including injunctive relief, compensatory, and punitive damages, and attorney fees.

Employers with operations in New York City should consider preparing now for implementation of this new requirement. Steps to take may include reviewing employment application forms and removing any requests for salary history, training management employees with hiring responsibilities to avoid any discussion of salary history during the interview and hiring process, and developing protocols to see these policies are enforced.

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