



New Jersey to jump on the salary history "ban" wagon

Employment Alert

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In the new year, a New Jersey law will go into effect that will prohibit employers from asking job candidates questions about their salary history information as part of the application and interview process. With the new law in effect, New Jersey will join the many other states and some cities that have already enacted salary history bans in an effort to combat pay inequity. The intent behind the new legislation is to encourage employers to set compensation based on the applicant's experience, education, training and other lawful factors, rather than perpetuate any unlawful pay disparities that may currently exist.

Effective January 1, 2020, it becomes unlawful for any New Jersey employer to screen applicants based on salary history or to require that an applicant's prior history satisfy either minimum or maximum criteria. Therefore, prospective candidates cannot be asked to disclose current or former salary and benefit information.

If violated, this new law gives applicants the ability to bring a private right of action against the prospective employer, and **employers may face civil penalties between \$1,000 and \$10,000 per violation**. Employers also risk additional liability under the New Jersey Law Against Discrimination.

Under the new law, New Jersey employers will only be allowed to consider salary history in limited and expressly outlined circumstances. For example, if the applicant *voluntarily*, without employer prompting or coercion, provides

the employer with his or her salary history information, employers may consider salary history in determining salary, benefits, and other compensation, and may verify an applicant's salary history. The new law recognizes several additional exceptions, including that it does not apply to applications for internal promotions or transfers. Importantly, while the law does prohibit salary history inquiries by the employer, it does not require that the employer affirmatively disclose a wage scale for applicants and does not prohibit employers from asking applicants about their salary expectations.

Action steps

To ensure compliance with this new law, New Jersey employers should immediately review and revise employment applications to remove any inquiries related to salary history. In addition, all individuals involved in the recruiting and hiring of new employees should be made aware of the prohibitions and exceptions to the new law, and trained on how to conduct interviews and background checks without exposing the employer to potential liability.

Please contact any of the authors or one of the following attorneys in the DLA Piper Employment Group for assistance or with any questions on these important issues:

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