
Hughes Hubbard & Reed

NYC Bans Employer Inquiries into Applicant Salary History

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May 5, 2017 - On May 4, 2017, Mayor Bill de Blasio of New York City signed into law a broad prohibition on employers asking applicants for their salary history. Employers may not inquire about salary history "in writing or otherwise," which would preclude interview questions. These types of inquiries may not be made of the applicants' current or prior employers, either. Also specifically prohibited in the law is conducting a search of "publicly available records or reports" for salary history. Salary, in this context, includes wages, benefits, and other compensation. Discussions concerning applicants' salary expectations, and any amounts they may be forfeiting by leaving their current employers, are still permitted.

Employers are also prohibited from using salary history in making salary determinations unless applicants, without prompting, volunteer their salary history. There is an exception to the prohibition on inquiries where disclosure or verification of salary history is authorized by federal, state, or local law for employment purposes. None of the new prohibitions apply to applicants for internal transfer or promotion with their current employers.

The new law is aimed at ending perceived employer reliance on salary history to perpetuate wage gaps between the sexes. In this regard, the new law is intended to supplement the federal Equal Pay Act and New York State's version of the Equal Pay Act, both of which generally mandate that men and women receive equal pay for equal work.

Inquiries about salary history will now be added to the ever-lengthening list of unlawful discriminatory practices under the NYC Human Rights Law and will be enforced by the New York City Commission on Human Rights. The Commission can impose civil penalties of up to \$125,000 for an unlawful discriminatory practice or \$250,000 where the practice is found to result from a "willful, wanton or malicious act."

The law is effective October 31, 2017.

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