

Westchester County, New York Enacts Salary History Inquiry Law

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The Westchester County, NY Board of Legislators has [unanimously enacted legislation](#) that will prohibit employers and their agents from relying on, requiring, requesting, or seeking information about a prospective employee's wage history during the hiring process. The Wage History Anti-Discrimination Law (the "Law") will become effective on July 9, 2018.

The Law amends the Westchester County Human Rights Law ("WCHRL"), which applies to employers with four or more employees.

The Law provides that it is an unfair discriminatory practice for an employer, labor organization, employment agency or licensing agency (or an employee or agent of same) to:

- rely on a prospective employee's current or prior wage history in determining the wages for the prospective employee, unless such information is "voluntarily provided by the prospective employee to support a wage higher than the one offered by the employer";
- request or require that a prospective employee disclose current or prior wage information as a condition of being interviewed, considered, or offered employment; and/or
- seek from any current or former employer the prior wage information of a prospective employee.

An employer may, however, seek to confirm wage information from a current or former employer only after: (i) an employment offer with compensation has been made; (ii) the prospective employee responds to the offer by providing his or her prior wage information to support a wage higher than the one offered by the employer; and (iii) the employer has obtained written authorization from the prospective employee to confirm wage history from the current and/or former employer(s).

The Law further provides that employers may not refuse to hire an individual or retaliate against either a prospective or current employee based upon wage or salary history or because the individual has exercised his or her rights under the Law.

The new law will be enforced in accordance with the WCHRL, which grants the Westchester County Human Rights Commission authority to accept complaints and conduct hearings regarding alleged violations.

Notably, the Law provides that it will become null and void upon the enactment of either: (i) statewide legislation incorporating the same or substantially similar provisions as the Law; or (ii) state or federal regulations preempting the enforcement of such a law by the County of Westchester. This provision appears to acknowledge [pending legislation before the New York State legislature](#) that would restrict employers throughout the state from inquiring with job applicants about prior salary and/or using such information in making salary offers. New York Governor Andrew Cuomo recently [endorsed](#) the proposed legislation.

On the other hand, the state legislatures of both [Michigan](#) and [Wisconsin](#) have recently enacted legislation prohibiting local governments from regulating the information an employer or potential employer may request, require, or exclude on an application for employment or during the interview process from an employee or potential employee.

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