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New York State Set to Enact Ban on Salary History Inquiries

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In a continuation of its recent legislative push to expand the reach of anti-discrimination laws, New York State is set to be the latest jurisdiction to prohibit employers from asking job applicants and employees about their wage or salary history. The bill has been sent to Governor Andrew Cuomo, who is expected to sign.

Specifically, the recently passed bill would amend the New York Labor law to prohibit employers from:

- Relying on the wage or salary history of an applicant in determining whether to offer employment to such individual or in determining the wages or salary for such individual;
- Orally or in writing, seeking, requesting, or requiring the wage or salary history from an applicant or current employee as a condition of being interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion;
- Orally or in writing, seeking, requesting, or requiring the wage or salary history of an applicant or current employee from a current or former employer, current or former employee, or agent of the applicant or current employee's current or former employer;
- Refusing to interview, hire, promote, otherwise employ, or otherwise retaliating against an applicant or current employee based on prior wage or salary history;
- Refusing to interview, hire, promote, otherwise employ, or otherwise retaliating against an applicant or current employee because the individual did not provide wage or salary history in accordance with the law; or
- Refusing to interview, hire, promote, otherwise employ, or otherwise retaliating against an applicant or current or former employee because the individual filed a complaint with the State's department of labor alleging a violation of the law.

Applicants and employees may voluntarily and without prompting disclose or verify their salary history, including for the purpose of negotiating wages or salary. In addition, an employer would be permitted to confirm salary history if at the time an offer of employment with compensation is made, the applicant or employee responds to the offer by providing prior salary history to support a salary higher than that offered by the employer. The bill also would not diminish any rights or privileges enjoyed by employees under a collective bargaining agreement, nor would it affect any laws that otherwise require the disclosure or verification of salary history information.

Individuals alleging violations of the law would be able to file a civil action in court, and potential remedies include compensatory damages, injunctive relief, and attorneys' fees.

As many employers are aware, salary history inquiries have been prohibited in New York City since October 31, 2017, and are similarly prohibited in Suffolk and Westchester Counties.

If enacted, the new statewide law would take effect 180 days after signing. Notably, once effective, the New York State law will render Westchester County's law null and void since the Westchester law makes clear that it will be nullified once statewide legislation is enacted.

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