



January 2020

NY State Issues Guidance on Salary History Inquiries

By Glenn S. Grindlinger

The New York Department of Labor recently issued guidance to clarify the parameters of its prohibition on employers (or their agents) asking for any information about a job applicant's salary history.

The ban on salary history inquiries, which took effect on Jan. 6, covers not only the most recent salary or pay rate the applicant received from a prior employer, but *any* information about prior compensation and benefits. The law also prohibits an employer from relying on an applicant's salary history information as a factor in determining whether to interview or offer employment at all or in determining what salary to offer.

To ensure compliance, employers should remove or modify hiring and recruitment documents and practices that seek information about an applicant's prior salary, compensation package or benefits.

Guidance on Salary History Inquiries

The guidance, issued in a question and answer format, explains some of the ambiguities of the new law including:

- Defining an "applicant" for employment as any person who takes an affirmative step to seek employment with the employer and who is not currently employed with that employer, its parent company or a subsidiary.
- Noting that the prohibition on salary history applies not only to applicants for employment from outside the organization, but also current employees who are applying for other positions in the organization or who are being considered for promotion.
- Permitting employers to ask applicants about their salary/pay expectations provided that such an inquiry does not require the applicant to reveal the applicant's current compensation.
- Confirming that an employer does not violate the law, if the applicant voluntarily discloses their salary history as long as it is being done without prompting from the prospective employer. If an applicant voluntarily and without prompting discloses salary history information, the prospective employer may factor in that voluntarily disclosed information in determining the salary for that person.
- Affirming that the employer cannot research an applicant's salary from publicly available information or have their agent (e.g., a headhunter) obtain the applicant's prior salary history.
- Noting that the law applies with respect to any position that will be primarily based in New York even if the current applicant is located outside New York

and interviews occur outside of New York or by telephone.

In light of this new law, New York employers should review their hiring and recruitment practices. In addition, they should analyze their applications and remove any provision or question that seeks information about an applicant's salary, compensation or benefits. Finally, it is helpful to remind managers not to conduct their own on-line or social media "investigations" into prospective employees.

For more information about this alert, please contact Glenn S. Grindlinger at 212.905.2305 or ggrindlinger@foxrothschild.com, or any member of the firm's Labor & Employment Department.

Attorney Advertisement

© 2020 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.
www.foxrothschild.com