



AUGUST 2, 2019

New Jersey Enacts a Ban on Salary History Inquiries by Employers

Assembly Bill No. 1094 (the “Law”), banning employers from inquiring about the salary histories of job applicants, will go into effect on January 1, 2020.

What Employers Need to Know

Employers may only verify an applicant’s salary history and consider it in determining salary, benefits and other compensation *if* the applicant voluntarily provides the information, without prompting or coercion from the employer. Employers may also request a written authorization to confirm salary history *after* an offer of employment that includes an explanation of the compensation package offered to the applicant; and offer compensation information set for a job by collective bargaining agreements.

Employers may not screen a job applicant based on salary history, including prior wages, salaries, or benefits or require an applicant’s history satisfy any minimum or maximum criteria.

Exceptions

The Law does not apply to applications for internal transfers or promotions and employers may use prior knowledge of salary histories of former and present employees. The Law does not apply to any actions by an employer pursuant to any federal law or regulation that requires disclosure or verification of salary history for employment purposes or to determine an employee’s compensation. The Law also does not apply to employer inquiries about an applicant’s prior experience with incentive and compensation plans so long as the employer does not require the applicant to report on the amount of earnings based on the plans or publicly available information on salary history. However, the employer

may not retain or consider the publicly available information when determining the compensation package for the applicant.

Where an employer receives information as a result of a background check, the employer should specify that salary information not be disclosed. If information is disclosed, the employer shall not retain the information or consider it in determining compensation of the applicant.

New Jersey Law Against Discrimination

The Law amends the NJ Law Against Discrimination by making it a violation for employers to screen a job applicant based on his or her salary history, including wages, salaries or benefits; or require an applicant's salary history satisfy minimum or maximum criteria. The remedies of punitive damages and attorneys' fees under the NJ Law Against Discrimination do not apply to an employer's unlawful inquiry into an applicant's salary history.

Penalties

The New Jersey Department of Labor and Workforce Development has enforcement authority under the Law. Any employer found in violation of this Law will be subject to a civil penalty up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for every subsequent violation.

Takeaway for Employers

Employers should ensure that questions on employment applications asking about salary history are deleted and ensure that background check companies do not obtain or, if obtained, do not share an applicant's salary history information. Furthermore, employers should train recruiters and interviewers that they may not ask an applicant for salary history information prior to making an offer. Finally, employers should develop and implement methods to delete or otherwise exclude salary information that cannot be considered.

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If you have any questions regarding salary history inquiries, please do not hesitate to contact us.

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