

One Minute Memo®



The Trend Continues: NYC Passes Salary History Ban

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Seyfarth Synopsis: *The New York City Council passed a law that prohibits employers with New York operations from inquiring or relying on a job applicant's wage or salary history.*

In a move anticipated for [months](#), and a day after Equal Pay Day, the New York City Council approved a salary history "ban" making it illegal for any employer or employment agency in New York City to inquire about a job applicant's salary history and employee benefits in the interview process.

The bill was first introduced on August 16, 2016, in an attempt to prohibit employers from inquiring about a prospective employee's salary history on a job application. The proposed bill closely followed a provision from Massachusetts' amendments to its [Equal Pay Act](#) (and similar provisions in [Philadelphia](#)), which prohibit employers operating in those states from requesting the compensation history of prospective employees, unless the prospective employee has "voluntarily" disclosed such information.

On Wednesday, April 5, 2017, after months of debate and public comment, the New York City Council approved the passage of the bill. The bill formally amends the New York City Human Rights Law, Title 8 of the Administrative Code of the City of New York, which prohibits discrimination in New York City. 1253-A now makes it a discriminatory employment practice for an employer to:

- (1) inquire about the salary history of an applicant for employment, which includes either asking the applicant directly about his or her salary history or conducting a search of publicly available records or reports; or
- (2) rely on the salary history of an applicant in determining that applicant's salary at any stage in the employment process, unless the applicant "unprompted" and "willingly" discloses his or her prior salary information.

The law applies to all employers, both public and private. It is slated to go into effect 180 days after it is signed. We expect that it will be signed by Mayor de Blasio without delay, which would put the implementation in October 2017.

Proponents of the law champion it as a way to eliminate the "pay gap," arguing that an employer's use of an applicant's previous salary history could lead to gender-based wage discrimination under the theory that applicants would be paid based on their past earnings, rather than what they would be offered if judged on a blank slate. Many others criticize the bill because they believe that it will not eliminate any wage gap but will instead create greater reliance on salary negotiation.

The New York City Commission on Human Rights, the agency charged with ferreting out discrimination in the five boroughs, will be enforcing the new law. The commission will impose a civil penalty of up to \$125,000 for an unintentional violation, and up to \$250,000 for an “intentional malicious violation.”

Introduction 1253-A also comes off the heels of two other significant pieces of New York legislation. On November 4, 2016 Mayor Bill de Blasio signed Executive Order 21 that bans questions regarding an applicant’s salary history prior to conditional employment. Importantly, this only applied to public-sector applicants. Introduction 1253-A therefore closes the gap. On January 9, 2017, Governor Andrew Cuomo approved Executive Order 161, also in an effort to ensure pay equity by State employers. The Order prohibits State entities from asking or mandating an applicant to “provide his or her current compensation, or any prior compensation history,” before offering a conditional offer of employment with compensation. The concern is that, due to the identifiable wage gap between men and women, asking about previous salary history sets a unconscious line in the sand as a starting place for candidates, thus perpetuating the discrimination.

This development certainly follows the trend of the pay-equity movement taking place in cities and states nationwide. In light of the City’s new focus on prior salary history information, employers should be mindful of these new restrictions and evaluate how the new legislation may impact their practices. We are tracking these efforts in the 50-State Desktop Pay Equity Reference, which was [released](#) earlier this week.

[Seyfarth’s Pay Equity Group](#) leads the legal industry in fair pay analysis, thought leadership, and client advocacy. For more than twenty years, we have partnered with our clients to proactively address these developments and minimize risk. For questions, contact the authors, [Lisa Savadjian](#) at lsavadjian@seyfarth.com, [Christine Hendrickson](#) at chendrickson@seyfarth.com or the Seyfarth attorney with whom you regularly work.

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