



STOKES WAGNER

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NEW YORK LEGAL ALERT

October 30, 2017

An amendment to the New York City Human Rights Law, effective **October 31, 2017**, prohibits New York City employers from considering job applicants' salary histories. Here are the details:

The Amendment Prohibits Employers From:

- Inquiring about an applicant's salary history; or
- Relying on an applicant's salary history when making decisions about an applicant's salary at any time during the hiring process.

What Does "Inquire" Mean?

Employers may not ask an applicant or their former or current employers about the applicant's salary histories, nor may they search public records to obtain information about an applicant's salary history, unless the job applicant is a current employee of the employer.

What is "Salary History?"

The law defines "salary history" broadly to include wage, benefits, equity, deferred compensation, and any other forms of compensation.

What Can Employers Do?

- Consider salary history **if the applicant's disclosure is made "voluntarily and without prompting,"**
- Consider prior salary and compensation of current employees seeking promotions or transfers;
- Ask about an applicant's salary expectations;
- Discuss the anticipated salary range for the position;
- Discuss benchmarks for compensation, such as revenue or sales goals; and
- Discuss whether the applicant will forfeit equity or deferred compensation by taking the position.

Penalties for Noncompliance

A violation of this new law may automatically be deemed an unlawful discriminatory practice. An applicant's rights under this new law may be enforced before the New York City Commission on Human Rights or in court. Pursuant to the New York City Code, a civil penalty for an unlawful discriminatory practice may be imposed of up to \$125,000 for unintentional violations and up to \$250,000 for willful and malicious violations. A successful plaintiff in a civil lawsuit may recover back pay, front pay, compensatory damages and attorney's fees.

Are You in Compliance?

Stokes Wagner recommends that you review all job postings, applications (paper and digital), and hiring documents to ensure removal of any and all inquiries regarding salary history. You should also inform all employees involved in the hiring and recruiting process of the parameters of the new law, especially third-parties or outside vendors who participate in the hiring process on behalf of the employer.

Questions? Feel free to call us to discuss your hiring process and ensure compliance with this new law.