

## **NYC Enacts New Law Limiting Prospective Employers' Ability to Obtain and Use Salary History**

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**New York City Mayor Bill de Blasio** signed into law on May 4, 2017, legislation that will prohibit employers from inquiring about, relying upon, and verifying a job applicant's salary history. The bill, authored by New York City Public Advocate Letitia James, will apply to all employers in New York City, public and private. The legislation will take effect on October 31, 2017, 180 days after signing.

Advocates of the legislation (Int. 1253-A, now Local Law 67) maintain that it will contribute to gender pay equity and reduce the likelihood that women will be prejudiced by prior salary levels. Mayor de Blasio has hailed the new law as a "milestone achievement" for pay equity.

This new law is similar to recently enacted laws in other jurisdictions, including Massachusetts, Puerto Rico, and Philadelphia. (See our articles, [Massachusetts Governor Signs Tough Pay Equity Bill](#), [Puerto Rico Enacts Equal Pay Law, Prohibits Employers from Inquiring about Past Salary History](#), and [Philadelphia to Restrict Wage History in Hiring Decisions](#).)

### **Employer Prohibition on Inquiring About, Relying on Salary History Information**

Local Law 67 prohibits employers from inquiring about a prospective employee's salary history during all stages of the employment process.

The obligations imposed by Local Law 67 will prohibit an employer, employment agency, employee, or agent from:

1. Inquiring about the salary history of a job applicant; and/or
2. Relying on the salary history of a job applicant when determining his or her salary amount at any stage in the employment process, including when negotiating a contract.

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Local Law 67 defines “to inquire” as “communicate any question or statement to an applicant, an applicant’s current or prior employer, or a current or former employee or agent of the applicant’s current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant’s salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant’s salary history.”

“Salary history” includes the applicant’s current or prior wage, benefits, or other compensation. It does not include any objective measure of the applicant’s productivity, such as revenue, sales, or other production reports.

## **Exceptions**

Employers should note several significant exceptions and caveats.

First, if the applicant makes an unprompted and willing disclosure of his or her salary history to the prospective employer, the employer may consider salary history in determining the prospective employee’s salary, benefits, and other compensation, and verify the applicant’s salary history.

Second, an employer, without inquiring about salary history, may discuss salary, benefits, and other compensation expectations with the applicant, as well as any unvested equity or deferred compensation the applicant would forfeit or have cancelled by resigning his or her current employment. Should an employer’s attempt to verify an applicant’s non-salary-related information or conduct a background check that results in disclosure of the applicant’s salary history, the employer is prohibited from relying on the salary information during the hiring process and contract negotiation stages when setting the salary, benefits, or other compensation of the applicant.

Further, Local Law 67 does not apply to:

1. New York City employers acting pursuant to any federal, state, or local law authorizing the disclosure or verification of salary history, or requiring knowledge of salary history for employment purposes;
2. Current employees applying for an internal promotion or transfer; or
3. Public employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established in collective bargaining.

## **Enforcement**

The new law will be enforced by the New York City Commission on Human Rights, which will investigate complaints made under the law. The Commission may impose civil penalties ranging from \$125, for an intentional violation, up to \$250,000, for an “intentional malicious violation.”

The Commission also has the authority to promulgate further rules pursuant to the law.

Pursuant to the New York City Human Rights Law, individuals may pursue claims by way of a private right of action.

## Suggested Employer Actions

In anticipation of the effective date, New York City employers should review and modify their employment applications, interview protocols, and verification policies to exclude inquiries that relate to a job applicant's salary history.

## Other Council Activity

New York employers should monitor progress of a significant employment legislation involving predictable scheduling and related issues that is before the Council. (For further information, see our article, [New York City Council Seeks Major Workplace Reforms for Fast Food, Retail Workers](#).) The Council has held a hearing on these proposals and is expected to move forward with the legislation shortly.

While not employment-based, other proposed legislation relevant to New York employers would increase the minimum threshold for application of the Commercial Rent Tax, which applies to certain businesses below 96th Street in Manhattan.

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