

New York State's Latest Push to Broaden Salary History Ban

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New York Governor Andrew M. Cuomo continues his push to address the gender pay gap in New York. The latest is the release of a Department of Labor report commissioned by the Governor that recommends legislation barring all employers, public and private, from asking or searching for prospective employee's salary history.

In January 2017, the Governor [signed two Executive Orders](#) taking aim at the use of salary history to set wages for state employees and employees of state contractors:

"We will advance women's rights and equal pay by adopting salary history blind hiring practices and requiring all state contractors to report employees' gender and pay."

- [Executive Order #161](#) Will Prohibit State Entities from Evaluating Prospective Candidates Based on Prior Wage History
- [Executive Order #162](#) Will Require State Contractors to Disclose Gender, Race, Ethnicity, Salary of all Employees to Drive Transparency and Progress Toward Wage Equity

In particular, Executive Order 162, which took effect in June 2017, requires state contractors to provide job title and salary data for each employee working on a state contract, or the job titles and salaries of *all contractor employees* if the contractor cannot identify the specific employees working directly on the contract. State contractors can learn more about their salary reporting [obligations under Executive Order 162 here](#).

Based on the [April 2018 report](#) from the Department of Labor, the Governor is supporting legislation to expand the salary history inquiry ban to private employers. Significantly, the Report recommends passage salary history ban that:

[p]rohibits *all employers, public and private*, who do business in New York State from asking prospective employees about their salary history and compensation. In addition, bar employers from searching public records to discover this information. If women are already being paid less for working the same jobs and being just as productive as men, this will halt the compounding nature of the gender wage gap to cover all public and private employers doing business in New York State.

A [pending bill](#) broadly prohibits all employers from:

- Relying on salary history in determining a prospective employee's wages;
- Requesting salary history information from prospective employees, employees, and current or prior employers;
- Refusing to interview, hire, or promote a prospective or current employee based on salary history; and
- Retaliating against a prospective or current employee for declining to provide salary history or who has filed a complaint alleging a violation of these prohibitions.

This follows increasing scrutiny on the use of salary history in setting starting pay all across the country, including a number of state and local laws banning salary history inquiries.

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