

New York Adopts Laws Aimed at Combating Salary Inequality and Race Discrimination

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In the final days of its 2019 Session, the New York State Legislature passed three bills that, respectively, will bar employers from inquiring about applicants' past salary history, prohibit wage differentials based on protected class status, and ban race discrimination based on an employee's hair or hairstyle. Governor Andrew M. Cuomo is expected to sign these bills.

Following New York City

The measures are similar to laws enacted in New York City in recent years. This is hardly surprising in light of the flip of the New York State Senate as a result of the 2018 election from a nominally Republican-majority to an overwhelmingly Democratic- and Downstate-majority. That election ushered in one-party control of the Executive and Legislative branches of New York State, leading to the passage of a host of progressive legislation — some of which had been bottled up for years — on employment discrimination and other issues. (See our article, [New York Expands Harassment Laws](#).)

The political developments in the state capital mirror those of New York City following the 2013 municipal elections. In 2014, Bill de Blasio, who ran on a progressive platform, succeeded the moderate Mayor Michael Bloomberg, who ran on the Republican and Independent lines during his three terms in office. At the same time, the 2013 elections brought the ascendancy of the New York City Council's Progressive Caucus, which has driven policy in New York City government since 2014. The one-party rule in New York City over the past six years has led to numerous pro-worker reforms, including paid sick leave and requirements that fast food employees be paid when their shifts are canceled close to the time they were scheduled.

Salary History

The new state law barring inquiries about an employee's salary history, A. 5308-B (Crespo) / S. 6549 (Carlucci), will take effect 180 days after enactment. It will prevent employers from orally or in writing requesting or relying on the wage or salary history of an applicant in determining whether to offer employment or the amount of salary to be offered. An employer cannot refuse to consider or retaliate against an applicant who refuses to divulge his or her salary history. The applicant may voluntarily provide this information if he or she is not coerced or promoted into doing so.

The law applies to job applicants not currently employed by the employer, as well as the employer's current employees seeking a new position within the company.

The Legislature's action mirrors the law passed in New York City to ban employers there from inquiring about the salary history of a job applicant. (See our article, [New York City Council Approves Legislation Limiting Prospective Employers' Ability to Obtain and Use Salary History Information](#).) The state and city laws differ in certain respects. For example, the city law prevents employers from "conduct[ing] a search of publicly available records or reports for the purpose of obtaining an applicant's salary history." This is not prohibited by state law. This difference is significant, particularly for applicants for positions with a public employer, because government salaries for state employees are available online and employers outside of New York City will be able to review this information without violating state law. Further, the New York City law applies only to applicants, not to current employees; the state law bars salary history inquiries of both applicants and current staff seeking promotions or transfers.

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The state's action also follows other New York localities, such as Suffolk and Westchester Counties, that have adopted similar measures. (See our articles, [Salary History Ban Arrives in New York's Suffolk County and Localities and the Salary History Ban: Next Stop, Westchester County, New York.](#))

Equal Pay

Wage differentials based on protected class status will be prohibited by S. 5248-B (Biaggi) / A. 8093-A (McMahon). The new law will expand current law that protects against gender-based pay inequity by requiring equal pay for "substantially similar work" and prohibiting pay differentials based on a person's membership in a host of protected class or classes, including age, race, sexual orientation, disability, and domestic violence victim status.

The new law will lower the burden of proof for a person claiming wage or salary discrimination based on his or her protected class membership by not requiring a showing of "equal" work.

Pay differentials will be permitted when they are based on a seniority system, a methodology measuring earnings by quantity or quality, or a bona fide reason other than the individual's membership in a protected class. The pay differential must be job-related and due to business necessity, such as geography, education, or experience. Treble damages are possible under New York Labor Law Section 198 for violations of this law.

The law will take effect 90 days after being signed by the Governor.

Race Discrimination Based on Hair or Hairstyle

"Race" in the Executive and Education laws will be amended to include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles" under A. 7797 (Wright) / S. 6209 (Bailey). Protective hairstyles include, but are not limited to, "such hairstyles as braids, locks and twists." This law will take effect immediately upon signing by the Governor.

The state's effort to prevent race discrimination on the basis of natural hair or hairstyles follows guidance issued on the same topic by the New York City Commission on Human Rights (CCHR) in February 2019. The stated purpose for this action is to prevent employer policies issued on the purported grounds of "neatness" that, in effect, limit "the way Black people move through workplaces, public spaces and other settings." (See our article, [New York City Releases Enforcement Guidance on Race Discrimination on Basis of Hair.](#)) The Sponsor's Memo on the bill favorably cites the CCHR's guidance on this issue. The Memo also reiterates, from the guidance, that people have the right to maintain their natural hair or treated or untreated hairstyles as they would naturally.

Other bills introduced but were not taken up for a vote during the 2019 session that mirror recent New York City laws included efforts to "ban the box" to prevent criminal histories from being considered in the job application process and a measure that would bar employers from conducting credit checks of prospective employees. These measures will be considered again in the 2020 Legislative Session.

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