

## New Jersey Bill Seeks to Bar Pre-Hire Inquiries into Candidate Compensation History

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The New Jersey State Assembly is considering a bill (A-4119) that would amend the ***New Jersey Law Against Discrimination (“LAD”)*** to prohibit an employer from seeking compensation information on a candidate. If passed, the legislation will affect the hiring process in New Jersey, including requiring changes to application materials, interview questions, and negotiations over compensation.

According to its sponsors, the bill introduced on September 15, 2016, is designed “to strengthen protections against employment discrimination and thereby promote equal pay for women[.]”

A-4119 provides that an employer may not seek the salary history of a candidate for employment until extension of an employment offer. The bill further prohibits an employer from requiring an employee to divulge information about her or his or another employee’s compensation as a condition of employment.

The proposed law, however, expressly states that a candidate for employment may voluntarily disclose her or his wages prior to an employment offer, so long as the disclosure is not coerced by the employer.

Interestingly, the bill prohibits an employer from setting a minimum or maximum salary history as a condition of being interviewed for a position. The legislation, therefore, would eliminate an employer’s ability to cull applicants or those it deems likely to pursue an employment relationship based upon an individual’s compensation history. The employer, according to the bill, may confirm only salary history following an offer of employment to the candidate. Furthermore, A-4119 prohibits an employer from taking any retaliatory action against an employee or candidate based upon compensation history or any opposition to requests for salary information.

The bill, if passed, would affect the hiring practices of New Jersey employers. An employer would be need to revise application materials to eliminate inquiries into an applicant’s salary history with prior employers, among other changes. Furthermore, an employer no longer could use salary history to determine realistic candidates for the position, *i.e.*, those most likely to accept a position in the desired salary range. An employer that extends an offer to a candidate, moreover, may be prohibited from making inquiries into the candidate’s salary history during negotiations. The proposed law permits an employer only to confirm salary history after an offer of employment is extended to the candidate, even though employment offers generally include salary terms. Therefore, the bill effectively would prevent an employer from using compensation history during salary negotiations with prospective employees.

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