

Localities and the Compensation History Ban: Next Stop Albany County

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New York Governor Andrew Cuomo has long supported measures related to pay equity. In 2015, he signed a pay equity law that prohibited an employee from being paid a lower wage on the basis on gender. Similarly, in early 2017, Cuomo signed an executive order prohibiting state agencies from making pre-employment offer inquiries about a candidate's prior or current salary. www.natlawreview.com/article/new-york-toughens-equal-pay-laws-state-contractors-must-disclose-salary-data-state

Unlike California, Delaware, Massachusetts, and Oregon, which have passed statewide "salary history ban" legislation, New York has yet to pass its own uniform "salary history ban." Instead, areas of New York have begun individually to prohibit asking an applicant for his or her salary history. New York City put into effect a salary history ban on October 31, 2017. Albany County is next.

Albany County's compensation history ban goes into effect Sunday, December 17, 2017. At the pre-offer stage, employers who employ at least four employees or employment agencies will not be permitted to seek the salary history of any job applicant from applicant's current or former employers. In addition, applicants cannot be "screened" based on their current "wage" (including benefits or other compensation, or salary history), such as requiring an applicant's prior "wage" satisfies minimum or maximum criteria as a threshold for further consideration. A job applicant also may not be requested or required to disclose prior wages or salary

history as a condition of being interviewed or for further consideration of employment. Only after an offer of employment with compensation is extended to the job applicant can an Albany County employer or employment agency obtain salary history information. Even then, the employer or employment agency can collect the information only for the sole purpose of confirming the applicant's prior wages, including benefits or other compensation, or salary history. (Inquiries relating to compensation, therefore, can be much broader than just "salary.")

Potential penalties include compensatory damages, reinstatement (with or without back pay), and/or oversight imposed by the Albany Commission on Human Rights. The Albany County Human Rights Law also allows a potential private right of action filed by the aggrieved individual.

Albany County employers and employee agencies should take steps now to update their pre-employment practices to comply with this local law and New York pay equity initiatives. Employers and employment agencies should ensure that any discussions about compensation history are not affirmatively engaged in during pre-offer stage, including by asking such information on an application form.

Local jurisdictions likely will continue to consider salary history ban legislation, both in New York State and across the nation, so employers should stay alert for additional legislation.

Thomas Petriccione also contributed to this article.

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