



New Jersey Bans Inquiries into Job Candidates' Wage and Salary Experience

Client Advisories

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In the latest effort across the country to address the "glass ceiling" and pay inequity issues, New Jersey recently passed a new law to significantly limit salary information that can be obtained from job applicants before hiring them. The law will go into effect on January 1, 2020, and all employers need to take notice.

New Jersey is just the latest of several states and localities that are attempting to achieve pay equity by restricting what can be asked of job applicants as to their salary history. Specifically, this new law prohibits employers from inquiring as to, and/or screening, job candidates based on, their salary history, including wages, salary, or benefits. The law also prohibits employers from even considering a candidate's refusal to volunteer compensation information in making an employment decision. In addition, employers cannot request that job candidates provide written authorization to confirm salary history until **after** a job offer has been extended. Many employers routinely ask job applicants during the interview process about their current salary and benefits package, which is no longer legal. Any inquiry into an applicant's salary history is now unlawful. Employers may, however, still ask about what compensation an applicant is looking for, if hired; yet, in doing so, employers must be cautious to avoid any claim that this was in reality a request for an applicant's salary history.

The law has some limited exceptions. First, employers may consider salary information voluntarily provided by candidates. Second, the law does not apply to internal transfers of current employees, or salary knowledge for candidates who previously worked for the employer. Third, employer actions taken to comply with federal law are also exempted. In addition, employers are still permitted to conduct background checks, but in doing so, they must specify that salary history is not to be disclosed. Lastly, employers may inquire generally about candidates' incentive and commission plans with previous employers, so long as they do not seek the amount of compensation received for the plans.

Employers who operate in states in addition to New Jersey may conduct salary inquiries for candidates for non-New Jersey positions (provided those inquiries are not prohibited in the other state), as long as the application states that candidates for positions physically located, in whole or substantial part, in New Jersey are not to

answer the question. Of course, numerous other localities have passed similar laws, so employers should seek advice on those jurisdictions before taking any action.

This new law goes into effect January 1, 2020. Until that time, employers should review their hiring policies, consider training of all interviewers, and update their job applications to ensure compliance with this new law. If you have questions about this law, or would like your materials reviewed, please contact **Peter Frattarelli** or any member of Archer & Greiner's **Labor and Employment Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350

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