

New York City - Salary History Inquiry Law

This is being provided for informational purposes only, and not as legal advice. As the employer or user of consumer reports, it is your responsibility to ensure compliance with all of the relevant federal, state and local laws governing this area, including, but not limited to, the FCRA. We strongly recommend that prior to use, you consult with your own attorney.

New York City Mayor Bill de Blasio signed legislation prohibiting employers from inquiring about a prospective employee's salary history during the hiring process. New York City joins Massachusetts and Philadelphia in passing legislation seeking to address the gender pay gap and ensure pay equity in the workplace.

The new law will take effect October 31, 2017, applies to private employers, among others, and amends the Administrative Code (section 8-107) of the City of New York in relation to prohibiting employers from inquiring about or relying on a prospective employee's salary history. The new law also amends the New York City Human Rights Law and imposes penalties ranging from \$125 to \$250,000 for "intentionally malicious" violations. Therefore, employers should re-evaluate their practice of inquiring into a prospective employee's salary as part of their background screening process (including revising employment applications, and advising HR Departments, and those who conduct employment interviews), in order to ensure compliance.

Once effective, it will be an unlawful discriminatory practice for an **employer, employment agency, or employee or agent** to (i) inquire about the salary history of a job applicant; or (ii) rely on the salary history of a job applicant in determining salary, benefits or other compensation for such applicant during the hiring practice, and including the negotiation of a contract. These prohibitions extend to inquiries made directly to the applicant, and to the applicant's current or former employer, as well as searches of public records. The term "salary history," as it is used in the law, includes an applicant's current or prior wage, benefits or other compensation. It does *not* include any objective measure of an applicant's productivity (e.g., revenue, sales or other production reports).

Exceptions — an employer can still engage in a discussion with the job applicant about their expectations with respect to salary, benefits and other compensation; but, they cannot ask about salary history. This discussion may include any unvested equity or deferred compensation that the applicant would forfeit or have canceled by virtue of the applicant's resignation from employment with their current employer. Another exception to the general restriction on inquiring about salary history is where the job applicant proactively, voluntarily and without prompting, discloses salary history, at which point an employer may consider the salary history in determining salary, benefits and other compensation for the applicant, and may even verify the job applicant's salary history.

The general prohibition on inquiring about salary history does not apply to (i) attempts by an employer to verify an applicant's disclosure of non-salary-related information, or to conduct a background check in accordance with applicable law; (ii) situations where federal, state or local law specifically authorizes such disclosure or verification of salary history for employment purposes, or which specifically require knowledge of prior salary history in order to determine an applicant's compensation; (iii) internal transfers or promotions within an organization; and (iv) public employee positions governed by a collective bargaining agreement.

Background screening companies should note the term "agent" and the potential for a claim of engaging in an unlawful discriminatory practice. Bear in mind that New York City's *Stop Credit Discrimination in Employment Act* (SCDEA) makes it unlawful to "aid or abet" any form of prohibited discrimination, including credit discrimination, which applies to consumer reporting agencies (i.e., background screeners).