

NYC RETAILERS BEWARE: ASKING ABOUT APPLICANTS' SALARY HISTORY PROHIBITED BY LAW

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Beginning October 31, retailers and other employers in New York City will be prohibited from asking job applicants about their previous salary. The legislation is aimed at breaking the cycle of wage inequality affecting women and people of color by requiring employers to base compensation on the applicant's qualifications, not previous salary.

Which businesses are covered by the law?

Any employer which employs at least one employee in New York City is covered.

What type of job applicants are protected by the law?

All new hires, regardless of whether they are applying for full-time, part-time, or internship positions are covered. The law does not apply to an employer's current employees applying for an internal transfer or promotion in the same company.

What is the employer banned from doing?

No Inquiry: Employers may not ask candidates about their salary history (previous salary, benefits, and other types of compensation) at any time in the hiring process. Employers also may not search for this information on publicly available records nor obtain it from former employers.

No Reliance: Employers cannot rely on the salary history of the applicant at any stage in the employment process, including negotiating the contract.

What is the employer permitted to discuss?

Employers are still permitted to:

- Ask about objective measures of the applicant's productivity (e.g. revenue, sales, profits generated, etc.);
- Ask what the applicant's compensation expectations are for the position;

- Discuss any unvested or deferred compensation that the applicant would forfeit by resigning from his or her current job; and
- Inform the applicant about the position's targeted salary range.

Additionally, employers may ask an applicant's former and current employers about non-salary information (such as the applicant's role responsibilities) and may search for this information online. However, if the employer accidentally discovers salary history information during this process, it may not rely on that information in setting compensation.

What if the candidate volunteers his or her previous salary during an interview?

The law provides an exception if an applicant "voluntarily and without prompting" discloses his or her salary history. If that occurs, an employer may rely on that information to set compensation and may verify the applicant's salary history.

What are the consequences with failure to comply?

The new law will be enforced by the New York City Commission on Human Rights, which will investigate complaints made under the law. The Commission may impose civil penalties ranging from \$125, for an intentional violation, up to \$250,000, for an "intentional malicious violation." The New York City Human Rights Law also confers a private right of action for wronged individuals.

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