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Don't ask!: New York State's ban on salary inquiries went into effect on January 6, 2020

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Following the lead set by several municipalities throughout the state, as of January 6, 2020, all New York employers are now prohibited from inquiring into the wage or salary histories of current or prospective employees.

As noted in a prior Nixon Peabody Employment Law [Alert](#), the New York Labor Law has been amended to prohibit several different types of wage-related inquiries and conduct, except where otherwise required by law, including:

- relying on salary history in determining whether to make an offer of employment;
- relying on salary history in determining an applicant's or current employee's pay rate;
- seeking, requesting, or requiring (orally or in writing) an applicant's or current employee's wage or salary history as a condition precedent for an interview or consideration for employment or promotion;
- seeking, requesting, or requiring (orally or in writing) an applicant's or a current employee's salary history, whether from the applicant or current employee directly or from the applicant's or current employee's current or former employer;
- refusing to interview, hire, promote, employ, or retaliating against an applicant or current employee due to the applicant or current employee's wage or salary history; and
- refusing to interview, hire, promote, employ, or retaliating against an applicant or current employee who refuses to provide his or her salary history or because the applicant or current employee filed a complaint with the New York State Department of Labor about a violation of this law.

It should be noted that the law does not apply to wholly voluntary disclosures by a job applicant or current employee. Indeed, the law explicitly permits job applicants and current employees to voluntarily disclose their own wage or salary history, without prompting from the employer. The law also permits employers to confirm wage or salary history at the time an offer of employment is made where the job applicant or current employee is providing such information to support a

request for a higher wage or salary than is being offered by the employer. Notably, [guidance](#) recently promulgated by New York State suggests that a broad definition of “salary history” will apply, so employers must be cautious when inquiring into any aspect of an applicant’s or current employee’s prior compensation and benefits.

Certain employers in New York City and Westchester and Suffolk Counties have already been subject to the types of restrictions set forth in this law. Now that the law is in effect, all employers in New York State should review and update, if necessary, their pre-employment and evaluation practices, procedures, and forms (such as employment applications) to comply with the requirements of this new legislation. Employers should also be sure to counsel supervisors, human resources personnel, and others involved in job interviews and evaluating employees for promotion regarding the responsibilities and restrictions imposed by this law.

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