

LABOR & EMPLOYMENT ALERT

SALARY BAN

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On January 6, 2020, the statewide salary history ban, Labor Law Section 194-A, went into effect for New York. The law prohibits both public and private employers from asking prospective or current employees about their salary history, including compensation and benefits, either orally or in writing. The law applies to all positions that will be based primarily in the state, even if the interview process takes place virtually, by telephone, or in another state. This includes part-time, seasonal, and temporary workers, regardless of their immigration status. The inquiry ban, however, does not apply to bona fide independent contractors, freelance workers, or other contract workers, unless they perform work through an employment agency. Similar bans have been in place in New York City, Suffolk and Westchester Counties since October 31, 2017, but the new law expands the prohibition to the entire state.

Employers are prohibited from refusing to interview, hire, or promote, or otherwise retaliating against, an applicant or current employee: (i) based upon their salary history, (ii) because the applicant or employee refused to provide their salary history, or (iii) because such individual filed a complaint with the New York State Department of Labor alleging a violation of the law. Employers also may not prevent employees from inquiring or discussing their wages among themselves. Companies may, however, reasonably limit the time, place, and manner of such discussions within the workplace and workday pursuant to a written policy.

Notwithstanding the law, a job applicant may choose to disclose their salary history, as long as they do so voluntarily, without prompting from the prospective employer. If an applicant does disclose their salary history, the new law allows the employer to verify the in-

formation, and to take it into account when determining what salary to offer that applicant. The New York State Department of Labor recently released guidance which notes that employers may consider information already in their possession for existing employees (i.e., a current employee's current salary or benefits being paid by that employer). For example, an employer may use an employee's current salary to calculate a raise but may not ask that employee about pay from other jobs.

The takeaway for employers is that while they may not ask for a salary history during a job interview, they may ask about an applicant's salary expectations. As for current employees, while the employer can use the information they have about what they are paying their workforce, they may not ask their workers about what they were paid at previous jobs. Although this has long been the case for companies in the greater-New York City area, employers with operations in Nassau County and north and west of the City should review their interview procedures to ensure compliance.

Martin Clearwater & Bell, LLP is here to answer your employment questions.

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