



## Growing Trend to Enhance Pay Equity Laws by Restricting Use of Salary History

Several jurisdictions have recently passed laws prohibiting employers from inquiring about, or relying upon, a job applicant's salary history. These laws join the growing number of jurisdictions passing such laws in an effort to increase pay equity and ensure applicants are paid in accordance with the job they are being offered rather than based on their previous pay.

### New York City

#### THE BASICS

<i>Location</i>	New York City NY
<i>Legislation</i>	<b><u>Int 1253-2016</u></b>
<i>Type</i>	Salary History
<i>Effective</i>	<b>October 31, 2017</b>

#### KEY TAKEAWAYS

- ✓ Affects any employer with 4 or more persons in their employ.
- ✓ Employers may not inquire about an applicant's salary history, or rely on salary history in determining compensation during the hiring process.
- ✓ Salary history includes wage, benefits or other compensation.

**Who does this affect?** The law affects any employer with 4 or more persons in their employ. It is important for all impacted employers to read this Act and discuss with their legal counsel how it impacts their organization.

**When does this go into effect?** New York City's salary history law will go into effect on **October 31, 2017** (Admin. Code § 8-107).

**What is prohibited in the law?** Prohibits employers, employment agencies, or employees or agents thereof from inquiring about the salary history of an applicant for employment; or relying on the salary history of an applicant in determining compensation for such applicant during the hiring process, including the negotiations of a contract.

Inquiry includes communicating any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history, but does not include informing the applicant in writing or otherwise about the position's proposed or anticipated salary or salary range. Salary history includes the applicant's current or prior wage, benefits or other compensation, but does not include any objective measure of the applicant's productivity such as revenue, sales, or other production reports.

**Are there any exceptions?** Employers may, without inquiring about salary history, engage in a discussion with the applicant about their compensation expectations. Where an applicant voluntarily and without prompting discloses salary history to an employer, such employer may consider salary history in determining compensation for such applicant, and may verify such applicant's salary history. Each employer should review the law to evaluate if the law applies to their organization.

**What other requirements impact employers?** The New York City Commission on Human Rights is expected to release further guidance regarding this law prior to taking effect.

### Massachusetts

#### THE BASICS

<i>Location</i>	Massachusetts
<i>Legislation</i>	<b><u>S 2119</u></b>
<i>Type</i>	Salary History
<i>Effective</i>	<b>July 1, 2018</b>

#### KEY TAKEAWAYS

- ✓ Applies to all employers (as defined).
- ✓ Employers may not request or require applicant to disclose prior wages, or seek salary history of a prospective employee from a current or former employer.
- ✓ Employers may not pay a lesser wage for comparable work, as defined.

**Who does this affect?** The law applies to employers, defined as any person acting in the interest of an employer directly or indirectly.

**When does this go into effect?** Massachusetts' "Pay Equity" law goes into effect **July 1, 2018** (MGL Ch. 149, 151).



**What is prohibited in the law?** A few of the prohibitions under the new law bar employers from:

- ✓ Screening job applicants based on their wage, including requiring an applicant's prior wages satisfy minimum or maximum criteria, or requesting or requiring to *disclose prior wages as a condition of interview or continued consideration for an offer of employment.*
- ✓ Seeking the salary history of any prospective employee from any current or former employer.
- ✓ Paying a wage (incl. benefits or other compensation) less than employees of a different gender for *comparable work*, as defined.
- ✓ Requiring, as a condition of employment, that an employee refrain from inquiring about, discussing or disclosing information about either the employee's own wages, including benefits or other compensation, or about any other employee's wages.

**Are there any exceptions?** Yes, exceptions to these prohibitions include, but are not limited to:

- ✓ A prospective employee may provide written authorization to a prospective employer to confirm prior wages only after any offer of employment with compensation has been made to the prospective employee.
- ✓ Variations in wages shall not be prohibited if based upon certain factors outlined, such as "a bona fide merit system," "geographic location in which a job is performed," or "education, training or experience to the extent they are reasonably related..."

## Philadelphia

### THE BASICS

Location	Philadelphia PA
Legislation	<b>Bill 160840</b>
Type	Salary History
Effective	<b>Postponed</b>

### KEY TAKEAWAYS

- ✓ Applies to all employers doing business in the City of Philadelphia.
- ✓ Employers may not inquire about or require disclosure of salary history, or rely on wage history from any current or former employer in determining wages.
- ✓ Adds the new law to an existing posting requirement.

**Who does this affect?** The law applies to employers doing business in the City of Philadelphia through employees, or who employ one or more employees exclusive of parents, spouse, Life Partner or children, including any public agency or authority; any agency, authority or other instrumentality of the Commonwealth; and the City, its departments, boards and commissions.

**When does this go into effect?** Philadelphia's "Wage Equity" law was slated to go into effect **May 23, 2017** (City Code § 9-1103, 9-1131), but a lawsuit filed by the Chamber of Commerce of Greater Philadelphia has prompted the City to **postpone enforcement** until the litigation is settled.

**What is prohibited in the law?** Some requirements include prohibiting employers, employment agencies, or agents thereof from:

- ✓ Inquiring (as defined) about, requiring disclosure of, or conditioning employment or consideration of an interview or employment on *disclosure of a prospective employee's wage history.*
- ✓ Relying on a *prospective employee's wage history from any current or former employer* in determining wages for such individual, including the negotiation or drafting of any employment contract, unless applicant knowingly and willingly disclosed wage history.

**Are there any exceptions?** The law does not apply to any actions taken pursuant to any federal, state or local law that specifically authorizes the disclosure or verification of wage history for employment purposes.

**What other requirements impact employers?** The legislation also adds to § 9-1103(i), making it unlawful for any person subject to the new law to fail to post and exhibit prominently, in any place of business where employment is carried on, any fair practices notice prepared and made available by the Philadelphia Commission on Human Relations, which the Commission has designated for posting.

### Recommendations

We recommend reading the entire legislation to determine the impact this may have on your organization, as well as review and discuss with your legal counsel your organization's policies and procedures to ensure compliance with the changing laws. Seyfarth Shaw has also provided overviews you may read regarding the new [Philadelphia](#), [New York City](#), [Massachusetts](#), and [Summary of 2016](#) pay equity laws.