



Labor, Employment & Employee Benefits

Wage and Salary History Inquiries Prohibited in New York

Syracuse ♦ Ithaca ♦ New York City

October 2019

As part of Governor Cuomo's efforts to expand New York's anti-discrimination laws, the Governor signed new legislation which will effectively prohibit employers from making wage or salary inquiries with job applicants and employees. The new law takes effect on January 6, 2020 and provides that no employer shall:

- a) Rely on the wage or salary history of an applicant in determining whether to offer employment to such individual or in determining the wages or salary of such individual;
- b) Orally or in writing seek, request, or require the wage or salary history from an applicant or current employee as a condition to be interviewed, or as a condition of continued employment;
- c) Orally or in writing seek, request, or require wage or salary history of an applicant or current employee from a current or former employer;
- d) Refuse to interview, hire, promote, or otherwise employ or retaliate against any applicant or current employee based upon prior wage or salary history;
- e) Refuse to interview, hire, promote, or otherwise employ or retaliate against an applicant or current employee because such applicant or employee did not provide such information;
- f) Refuse to interview, hire, promote, or otherwise employ or retaliate against an applicant or current or former employee because the applicant or current or former employee filed a complaint with the Department of Labor alleging a violation of this law.

The new law does provide an important exception to this rule. Specifically, nothing in the law prevents an applicant or current employee from voluntarily, and without prompting, disclosing or verifying wage or salary history. This may occur for the purpose of negotiating wages or salary.

An employer may also confirm wage or salary history if at the time of an offer of employment, the applicant or current employee responds to the offer by providing prior wage or salary information to negotiate a higher wage or salary than that offered by the employer.

Violations of this new law can lead to significant consequences. An applicant or current or former employee aggrieved of this law may bring a civil action for monetary damages sustained as a result of such violation. If successful, the aggrieved person may be also awarded injunctive relief as well as their reasonable attorneys' fees.

Employers should consider how this new law affects their interview and recruitment processes. For example, applications for employment often include requests for information about wages and salary earned in prior employment. Moreover, it is a typical subject of an interview process to inquire about an applicant's prior wage or salary history. Therefore, all employment related documentation should be revised to become compliant with the new law. Additionally, persons responsible for interviewing job applicants and persons responsible for discussing and negotiating wage/salary increases with employees should be educated on the requirements of the new law.

If we can provide you with additional insight and information regarding changes to the law and how they may impact your business, please contact :

John L. Valentino ♦ 315.701.6308 ♦ JValentino@bhlawpllc.com





BOUSQUET HOLSTEIN PLLC

Labor, Employment & Employee Benefits

Bousquet Holstein PLLC provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

Our attorneys are also fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.



John L. Valentino
jvalentino@bhlawpllc.com
315.701.6308



Sharon A. McAuliffe
smcauliffe@bhlawpllc.com
315.701.6315



L. Micha Ordway
lordway@bhlawpllc.com
315.701.6441



Joshua S. Werbeck
jwerbeck@bhlawpllc.com
315.701.6447



Kavitha Janardhan
kjanardhan@bhlawpllc.com
315.701.6468



Joseph J. Porcello
jporcello@bhlawpllc.com
315.701.6440



Rebecca R. Cohen
rcohen@bhlawpllc.com
315.701.6347



Cameron T. Bernard
cbernard@bhlawpllc.com
315.701.6446