

April 2017

### LABOR & EMPLOYMENT LAW ALERT

#### NEW YORK CITY ONE STEP CLOSER TO BANNING EMPLOYERS FROM ASKING ABOUT AND CONSIDERING PROSPECTIVE EMPLOYEES' SALARY HISTORY

*Mayor Bill de Blasio expected to sign the law, adding to the city's growing list of unlawful discriminatory practices in employment.*

On April 5, 2017, the New York City Council overwhelmingly approved a bill amending the NYC Administrative Code to prohibit employers from inquiring about, or relying on, a prospective employee's salary history.

The law, which will become effective 120 days after it is signed, contains two main prohibitions. Employers and employment agencies (including employees or agents thereof) *may not*:

1. inquire, in writing or otherwise, about a job applicant's salary history; and/or
2. rely on a job applicant's salary history in determining the applicant's salary at any stage of the employment process unless the applicant, unprompted, willingly disclosed the salary history.

A limited exception applies to circumstances where applicable law authorizes the disclosure or verification of salary history for employment purposes. Notably, the law is limited to job applicants, and does not facially apply to existing employees transferred or promoted to new internal positions. The law does not prohibit discussion of an applicant's salary expectations. The NYC Commission on Human Rights will enforce the new law, but penalties for violations have yet to be determined.

The law has been touted as another step to address gender pay inequality. It is intended to focus hiring based upon skill and ability, and market compensation for the role without considering an applicant's potentially gender-deflated prior salary. Employers should immediately review and revise their form applications, interview processes, reference and background/credit check procedures to ensure the questions and topics covered do not implicate disclosure of an applicant's salary history. Additionally, employers are well advised to confirm with engaged outside recruiters and placement firms to prevent unauthorized disclosure of prohibited applicant information.

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We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

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