

# Don't Ask, But Can Tell—New York State to Prohibit Questions Regarding Prior Salary History

October 18, 2019

Since October 2017, employers in the City of New York have been banned from asking job applicants about their prior salary history. On January 10, 2020, the rest of New York State will follow the same rules.

Earlier this year, the New York State Legislature adopted a bill which bans all employers in New York State from asking about prior wage or salary history. Governor Cuomo signed the bill into law on July 10, 2019. See

[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A05308&term=2019&Summary=Y&Actions=Y&Memo=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05308&term=2019&Summary=Y&Actions=Y&Memo=Y&Text=Y)

. The law becomes effective six months later, i.e. January 10, 2020.

The stated rationale for this law is that women and minorities historically have been subject to wage gaps, despite numerous Federal and State laws which prohibit such wage discrimination. Paying women and minorities less because they previously were earning less would perpetuate such discrimination.

It is important to note that this will apply not only to job applicants, but to current employees seeking raises or promotions.

The law prohibits these inquiries by anyone acting as an employment agent, recruiter, or otherwise connecting applicants with employers, as well as employers themselves. Therefore, employers cannot get around this law by having recruiters (a/k/a "headhunters") ask the questions.

However, if an employee or applicant "voluntarily, and without prompting" shares wage and salary history with the employer, that information can be considered when negotiating for an appropriate salary. The statute states:

Nothing in this section shall prevent an applicant or current employee from voluntarily, and without prompting, disclosing or verifying wage or salary history, including but not limited to for the purposes of negotiating wages or salary.

An employer may confirm wage or salary history only if at the time an offer of employment with compensation is made, the applicant or current employee responds to the offer by providing prior wage or salary information to support a wage or salary higher than offered by the employer.

Nothing prevents an employer from asking about "desired salary", although employers should be careful about how the question is phrased. "What salary are you seeking?" or "What are your salary requirements?" should be OK. "Based on what you are currently making, what salary are you seeking?" would probably cross the line.

All employers should review their employment applications and interview procedures to be sure they are in compliance with the new law. If you have questions regarding any aspect of employment law, feel free to contact **Thomas B. Wassel** at **(516) 357-3868** or via email at [twassel@cullenanddykman.com](mailto:twassel@cullenanddykman.com), **Hayley B. Dryer** at **(516) 357-3745** or via email at [hdryer@cullenanddykman.com](mailto:hdryer@cullenanddykman.com) or **James G. Ryan** at **(516) 357-3750** or via email at [jryan@cullenanddykman.com](mailto:jryan@cullenanddykman.com).

*\* Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.*

## Practices

- Banking and Financial Services
- Commercial Litigation
- Regulatory and Compliance
- Labor and Employment