



# New York City Salary History Legislation

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**maximum** management  
& FRAZER JONES. SPECIALIST SEARCH & RECRUITMENT

in collaboration with

**EPSTEIN  
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# Introduction

Effective October 31, 2017, the New York City Human Rights Law makes it unlawful to inquire about the salary history of an applicant for employment in New York City, defined as the City of New York including all five boroughs, stating “it is an unlawful discriminatory practice for an employer, employment agency, or employee or agent thereof:

- (1) To inquire about the salary history of an applicant for employment, or
- (2) To rely on the salary history of an applicant in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract.”



## Definitions

**“Salary history”** is defined broadly and includes wages, benefits, or other compensation. It does not include, however, any objective measure of the applicant’s productivity, such as revenue, sales, or other production reports.

The term **“to inquire”** means “to communicate 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” or conduct a search of publicly available records or reports to seek salary history.



# Permissible Activities

## **An employment agency or employer may still:**

- inform the applicant in writing or otherwise about the position's proposed or anticipated salary or salary range;
- engage in a discussion with the applicant about his or her expectations with respect to salary, benefits, and other compensation;
- ask about objective indicators of applicants' work productivity in their current or prior jobs, such as revenue, sales, production reports, profits generated, or books of business;
- make inquiries about salary history that are authorized or required by federal, state, or local law;
- inquire about unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from his or her current employer;
- consider the prior salary of a current employee who is seeking an internal transfer or promotion;
- ask an applicant about the value of competing offers from other prospective employers; and
- perform a background check in accordance with the requirements of the applicable law, so long as:
  - the check does not include a request for, or confirmation of, prior salary history, and
  - the employer or employment agency does not, if the background check does disclose such information, utilize same for purposes of determining the salary, benefits, or other compensation of the applicant.



# Impermissible Activities

## **An employment agency or employer should not:**

- ask an applicant his or her current salary;
- ask an applicant what he or she earned at a prior employer;
- ask what the applicant's current total compensation is;
- ask for a copy of W-2 from prior years;<sup>1</sup>
- ask about bonuses awarded in prior years;
- ask about commissions received in prior years;
- ask about benefits received at current or prior employers;
- ask applicants questions about or make statements intended to elicit information about applicants' current or prior earnings or benefits;
- ask applicants' current or former employers directly about applicants' current or prior earnings or benefits; or
- search public records to learn about applicants' current or prior earnings or benefits.

The law prohibits employment agencies and recruiters from inquiring about salary history on behalf of its clients. Similarly, agents working on behalf of applicants in negotiations with a prospective employer may only disclose an applicant's salary history with the consent of the applicant.

<sup>1</sup> However, employers may verify representations made about salary history (including requesting a W-2, paystub, or deferred compensation awards) if the applicant voluntarily and without prompting offers information about salary history.

# Exceptions and further notes

## **Several exceptions exist including the following:**

- (1)** The law does not apply where the applicant resides in New York City, but is interviewed and will work outside of New York City.
- (2)** Any actions taken by an employer, employment agency, or employee or agent thereof pursuant to any federal, state or local law that specifically authorizes the disclosure or verification of salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee's compensation;
- (3)** Applicants for internal transfer or promotion with their current employer; or
- (4)** Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant's disclosure of non-salary related information or conduct a background check, provided that if such verification or background check discloses the applicant's salary history, such disclosure shall not be relied upon for purposes of determining the salary, benefits or other compensation of such applicant during the hiring process, including the negotiation of a contract.

Please note that if an applicant voluntarily and without prompting discloses salary history information, then the employer or employment agency could consider salary history in determining salary, benefits, and other compensation for such applicant. The employer or employment agency could also verify the applicant's voluntarily disclosed salary history. However, the employer or employment agency should ensure that any disclosure of salary information is truly voluntary and unprompted.

New York City is not the first city to have such restrictions. Similar laws have been enacted elsewhere. You should be sensitive to the applicable jurisdiction in which the recruiting occurs and any rules that might apply there.

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# Guidance to HR and Talent Acquisition Teams

In anticipation of the October 31, 2017 effective date of this law, it is important that employers

- Revise applications and background check forms to eliminate any salary history requirements
- Train all recruiters and other individuals engaged in interviewing to make sure they are aware of these new restrictions
- Focus any interviews or conversations concerning compensation decisions on salary expectations, not current or past earnings
- Establish a set salary range for specific positions, if not already in place

Maximum Management & Frazer Jones, the world's largest HR search and recruitment firm with more than 80 consultants in 12 global locations, has collaborated with the law firm of Epstein Becker & Green to present the preceding guidelines.

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