



COMPLIANCE CONNECTION

NJ Bans Salary History

On July 25, 2019, New Jersey's Acting Governor Sheila Oliver signed NJ Bill A1094 ("the Law"), which bans employers from asking applicants for their salary history. The Law becomes effective January 1, 2020.

Link to law: https://www.njleg.state.nj.us/2018/Bills/A1500/1094_U1.HTM.

The law makes it illegal for an employer to:

1. Screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries or benefits; or
2. Require that the applicant's salary history satisfy any minimum or maximum criteria.
3. Consider an applicant's refusal to voluntarily reveal prior compensation information as a factor in any employment decision.

The Law allows employers to:

1. consider an applicant's salary history in determining salary, benefits, and other compensation, and to verify the applicant's salary history, if the applicant voluntarily, "without prompting or coercion," provides the employer with salary history; and
2. Ask an applicant to provide the employer with a written authorization to confirm salary and benefits history, after the employer has made an offer of employment that includes an explanation of the overall compensation package.

The Law does not apply to:

- o applications for internal transfer or promotion (e.g., job postings), or the employer's use of previous knowledge obtained as a consequence of the applicant's prior employment with the employer;
- o any actions taken by an employer pursuant to any federal law or regulation that expressly requires the disclosure or verification of salary history for employment purposes, or requires knowledge of salary history to determine an employee's compensation;
- o background checks seeking non-salary-related information, provided employers specifically state that salary history information is not to be disclosed, and provided that, if the employer nevertheless receives salary history information, the employer shall not retain that information or consider it when determining salary, benefits or other compensation;
- o salary history information that is publicly available; however, an employer may not "retain or consider" that information when determining the salary, benefits or other compensation to be offered to the applicant, unless the applicant voluntarily, without prompting or coercion, provided the employer with salary history.



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- o inquiries regarding an applicant's experience with incentive and commission plans and the terms and conditions of the plans, provided the position includes incentives or commissions as a component of compensation, and provided the employer does not ask about prior incentive or commission earnings.
- o salary history information acquired from an employment agency if the applicant has provided the agency with written authorization to share that information with the employer;

The Law does not prohibit employers from providing applicants with wage or salary rates set for the job by a collective bargaining agreement or by civil service or other laws, or from paying those rates if the applicant is hired.

The Law does not prohibit employers that do business in multiple states from including an inquiry regarding salary history on an employment application, so long as the application states that applicants who will be working in New Jersey should not answer that question.

An employer that violates the Law faces liability for a civil penalty of up to \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each subsequent violation.

Notably, the Law also amends the New Jersey Law Against Discrimination ("LAD"), making it a violation of the LAD to:

- o screen a job applicant based on the applicant's salary history, including wages, salaries or benefits, or
- o require that the applicant's salary history satisfy any minimum or maximum criteria.

The LAD's remedies of punitive damages, however, do not apply to an unlawful inquiry as to an applicant's salary history.

Next Steps for New Jersey Employers

- If your employment application includes questions about the applicant's salary history, consider either deleting them or, if you are a multistate employer, including a clear instruction that New Jersey applicants should not provide this information.
- Be certain that you expressly direct your background check vendors not to ask for or share an applicant's salary history information with the employer, unless the applicant has expressly authorized the disclosure.
- Conduct training with your recruiters and managers about the new law prohibiting them from asking applicants for salary history information prior to making an offer of employment that includes the proposed compensation package.
- Develop protocols for hiding, removing or discarding salary information that you receive and that must not be considered.