

# Recruiting, Hiring and Posting for Faculty and Staff in 2023

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## Road Map

- Posting Requirements
- Pay Transparency Laws
- Interviews
- Diversity Plans
- AEDT (AI)
- Background Checks
- Faculty Issues
- Onboarding
- Student Workers



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## Visiting Professor of Human Resources

- Dean Lumbergh of Hudson University in NY wants to hire a new Visiting Professor of Human Resources Management
- Lumbergh goes to the University's HR department and declares that the position he envisions will:
  - Be paid "in accordance with qualifications"
  - *May* teach some on-campus courses, but will mostly be assigned to cover online offerings remotely from Professor's home
- Lumbergh then says "but hold off for now because I may know the perfect guy and I want to offer it to him first"
- **How does HR respond to Lumbergh?**



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## Job Postings and Applications

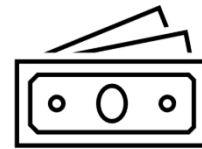
- **Salary Transparency Laws:** NYS, NYC, Albany, Westchester, Ithaca – nationwide
  - NYS Amendment – Jan. 11, 2023 (passed Senate Feb. 8, 2023)
  - NYC Amendment – Feb. 2, 2023
- **Other considerations:**
  - Accessibility (esp. digital)
  - Work location
  - Avoid certain language
    - Indicating discriminatory preference
    - NYC Fair Chance Act - NO: "Applicants' criminal history will be considered consistent with the requirements of the NYC Fair Chance Act."



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## NYS Salary Transparency Overview

- Post compensation or range of compensation
  - Good faith requirement
  - Commission-based positions
- Post job description *if one exists*
- Retaliation prohibited
- Applies to applicants and employees
  - May file complaint with DOL
- Does not preempt local law (Westchester question)
- Scope and Recordkeeping?



## NYS Salary Transparency Amendments

- Chapter amendment pursuant to Gov. Hochul's approval memo
- Eliminates records-keeping requirement
  - Prudent to keep records anyway, but would not be required
- Changes geographic scope of coverage – for remote work, must report to office/supervisor/worksites in NYS
  - Open question: HQ in NYS but directly reports to different office?
- Advertisement = “Make available to a potential pool of applicants for internal or public viewing, including electronically, a written description of an employment opportunity”

## NYC Salary Transparency

- Four or more employees with at least one in NYC
  - Employers outside NYC should consider remote workforce
  - Working in NYC – define broadly (e.g., calls and emails in PM)
  - Employees have private right of action against current employer
  - Right to Cure
    - \$0 Civil Penalty
    - Admission of liability for all purposes
  - *NYC Amendments on the Way?*



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## Interview Consideration

- Reasonable Accommodation – Applicants
  - EEOC guidance on hearing disabilities – ADA (Jan. 24, 2023)
  - Religious Accommodations standard may soon change under Title VII:
    - Groff v. DeJoy, No. 22-174, 2023 WL 178403, at \*1 (U.S. Jan. 13, 2023)
  - Pregnant Workers Fairness Act (PWFA) – (eff. June 27, 2023)
- Interview questions/hiring decisions
  - Salary History Bans
  - Ex: Title VII, Title IX, ADA, ADEA, NYSHRL, NYCHRL (other localities)
    - TIX: Vengalattore v. Cornell Univ., 36 F.4th 87 (2d Cir. 2022)
    - NYSHRL amended Dec. 23, 2022 – citizenship and immigration status



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## Required Postings – Applicants

- NY Labor Law § 201 (Amended Dec. 16, 2022)
  - Immediate effect
  - Digital copies of required Federal and State postings
  - Notice that documents required for physical postings available electronically
  - Public-facing website
    - Many interviews now remote
    - Applicants must also have access to certain required postings/notices -
      - Federal: EEOC, FMLA, EPPA
      - State: DHR, NY LL §740 (Whistleblower)



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## Visiting Professor of Human Resources

- HU did not hire Lumbergh's "guy" and instead posted the job:
  - With a salary of 60-80k
  - Primary location on HU's Westchester campus
  - "Superior written and oral communications ability" required
- Fifteen applicants apply for the position
- Lumbergh goes through applicant list and submits his top five candidates to DEI/HR for approval
  - All five played women's basketball at Erie Canal College, which happens to be Lumbergh's alma mater
- **How should DEI/HR respond?**



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## Faculty Diversity Plans/Goals

- Don't forget to use your new plan if you have one!
  - Did search committee and hiring manager get training?
  - Is there a DEI review of the applicant pool?
  - Was the position posted so as to attract a diverse applicant pool?
- Also consider OFCCP / Affirmative Action Report



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## Visiting Professor of Human Resources

- After arriving at a satisfactory applicant pool, HU invited the applicants to campus for interviews
- Dean Lumbergh was very excited to use the University's new HireBot™ software to help him decide on the right candidate
- Interviews were scheduled for May 1, 2023
- This would be HU's first use of HireBot™
- No information about HireBot™ had been provided to any of the applicants
- **What should HR tell Lumbergh about using HireBot™?**



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## New York City Local Law 144

- Effective January 1, 2023
- Enforceable **April 15, 2023** by the NYC Corporation Counsel and presumptively also the NYCCHR
- Regulates the use of artificial intelligence (“AI”) in hiring, promoting, and other employment decisions (automated employment decision tools or “AEDT”s) as they are used for **New York City residents**
- Purpose is to ensure transparency in AI usage in employment decision-making so as to avoid any discriminatory effects, intentional or not!



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## LL 144 – Regulation Highlights

- Automated Employment Decision Tool (“AEDT”) is defined as “any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons.”
- AEDT may **not** be used unless requirements are met:
  - (1) the tool has been subject to a bias audit within the last year; and
  - (2) a summary of the results (including the date of the results) of the most recent bias audit and distribution data (including selection rates and impact ratios for protected characteristics) for the tool have been made publicly available on the employer or employment agency’s website.



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## Notice Requirements for NYC Residents

Requires employers and employment agencies to satisfy these notice requirements for candidates/employees who reside in NYC at least ten (10) days before the AEDT is used on the candidate/employee:

- (1) That an automated employment decision tool will be used in assessing the candidate/employee; AND
- (2) The job qualifications and characteristics that the tool will use in the assessment.

**NOTE:** This notice must allow the candidate/employee to request an alternative process or accommodation. Under *proposed rules*, **no such accommodation is required to be provided.**



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## Preparing for NYC LL 144

- Speak with your local counsel to determine if your use of AEDT qualifies under the rule/proposed rules
- Stay abreast of the final publication of the rule!
  - We expect it to be finalized before enforcement date of April 15, 2023
- Begin searching for someone to conduct an independent audit bias and, if applicable (and published in the final rule) consider contacting the AI vendor you use to see if they are already employing bias audits which may be shared by employers using the same tool.



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## Visiting Professor of Human Resources



- Dean Lumbergh chooses Michael Bolton, PhD for the position
- As per HU policy, a background check is performed on Bolton
- The background check company that HU uses finds a 1999 conviction for vandalism (related to destroying an office printer)
  - **What does HR need to do with this result?**
- The conviction is confirmed and Dean Lumbergh says he cannot have “an ex-con” on the faculty and wants to hire another candidate
  - **Can HU refuse to hire Dr. Bolton based on the past conviction?**



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## Background Checks

- **EEOC Guidance:** always apply background checks equally!
- **Fair Credit Reporting Act:** when seeking background information such as a credit/criminal background check prior to employment
  - (1) Disclose possible use of results to candidate/employee, (2) investigative report disclosure option to candidate/employee, (3) written permission to do background check.
- **NYS Correction Law 23A:** prohibits employers from unfairly discriminating against persons convicted of criminal offenses and requires employers to evaluate qualified job seekers and employees with convictions fairly and on a case-by-case basis.
- **NYC Fair Chance Act:** prohibits most private employers from inquiring about applicants' (including employees & unpaid interns) criminal histories until after a conditional job offer has been made.



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## Visiting Professor of Human Resources

- The University ultimately hires Dr. Bolton and he negotiates a \$90,000 salary in light his pristine credentials
  - This is more than several long-time associate professors currently make
- Lumbergh assigns Bolton to several faculty committees and asks Bolton to serve as a PI on a grant application that the department was preparing to submit
- The next week, Bolton attended the faculty senate meeting and introduced a resolution expressing “no confidence” in Lumbergh

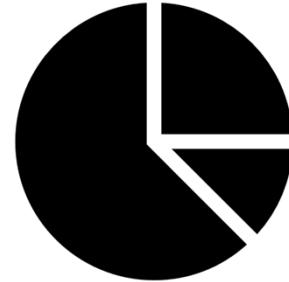
## Determining Faculty Salary & Status

- Faculty Handbook
  - Departmental Polices
- Temporary/Visiting/Tenure?
  - Representation
  - Voting rights
  - Promotion or Retention requirements
- Regression/Equity Analysis
  - Age/Race/Gender



## Determining Salary & Tenure Positions

- Defining the Position
  - Research?
  - Teaching?
  - Service?
- Funding Limitations/Requirements
- Evaluation
- Mentoring



## Visiting Professor of Human Resources

- Dr. Bolton begins teaching and Joanna Aniston is assigned as his teaching assistant
  - Joanna is does not receive pay for her work, but does get free tickets to Hudson University Lacrosse home games
- Bolton gives Joanna proxy access to his University email account so that she can help him respond to students
- While reviewing Bolton's email traffic, Joanna finds several messages that he has exchanged with Lumbergh where they discuss giving some students better grades based on physical appearance
  - Joanna forwards these messages to the whole class

## Onboarding

- Mandatory Trainings
  - Reporting (Title IX)
  - Sexual Harassment Prevention
  - Safety & Security
- Cyber/IT Security
- Privacy (FERPA) Compliance
- Employee Handbook
  - Relevant Student Policies
- Faculty Policies



## Student Employees - GAs/RAs/Interns

- Limited exceptions for alternative payment arrangements
  - Stipends
  - Tuition waivers
  - “Volunteers”
- Leave entitlements
- Workers’ Compensation
- Housing Licenses
- Intellectual Property
- Unionization



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## Thank You

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