

New York Prohibits Salary History Inquiries and Expands Equal Pay Claims

Yesterday morning, moments ahead of the parade in New York City to celebrate the Women's National Soccer Team's World Cup victory, Governor Andrew Cuomo signed into law two bills related to equal pay. The enactment of this legislation follows allegations made by members of the Women's National Soccer Team that the U.S. Soccer Federation has engaged in gender-based wage discrimination by paying the Women's Team less than the Men's National Soccer Team.

One of the two bills signed by the Governor yesterday [prohibits employer wage or salary history inquiries](#). The [purpose of the law](#) is "to prevent further wage discrimination by prohibiting employers from asking for wage or salary history as a requirement for a job interview, job application, job offer, or promotion." Employers are now prohibited from seeking, requesting, or requiring, orally or in writing, "the wage or salary history from an applicant or current employee as a condition to be interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion." Employers are further prohibited from asking the applicant's previous or current employer about the applicant's wage or salary history.

Notably, the law does not prohibit an applicant from voluntarily disclosing his/her wage or salary history for the purpose of negotiating wages or salary. If the applicant voluntarily discloses his/her wage or salary history in response to an offer of employment, the employer may then confirm such history with the applicant's previous employer.

The [second bill](#) signed into law yesterday morning amends the Labor Law, which previously only prohibited wage differentials based on sex, to allow individuals to bring wage differential claims based on any protected class status under the Human Rights Law. Additionally, the newly enacted bill includes an alternative standard for equal pay claims. The law now provides that no employee within a protected class shall be paid less than an employee who is not in the same protected class for equal work, or for "[substantially similar work](#), when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." (emphasis added). Although employee pay differentials are still permitted where the differential is job-related and consistent with business necessity, or based on a non-discriminatory factor, such as merit or seniority, these changes constitute a substantial overhaul to New York's equal pay law.

While these laws do not go into effect for several months (Salary History Bill – 180 days; Equal Pay Bill – 90 days), employers should take this opportunity to: review job applications to ensure there are no questions pertaining to wage or salary history; notify supervisors, managers, and human resources representatives who may conduct job interviews of these changes; and consider reviewing pay practices to ensure compliance under the law.

If you have any questions about this Information Memo, please contact [Jacqueline A. Smith](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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