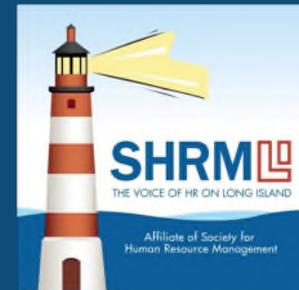


**Last Fridays “Lunch and Learn” Webinar:
2020 Kickoff:
A “Super” Ban for
Salary History Inquiries
January 31, 2020**

Henry S. Shapiro

Jackson Lewis P.C. | Long Island

Henry.Shapiro@jacksonlewis.com | 631-247-4651



Introductory Statement

THE MATERIALS CONTAINED IN THIS PRESENTATION WERE PREPARED BY THE LAW FIRM OF JACKSON LEWIS P.C. FOR THE PARTICIPANTS' OWN REFERENCE IN CONNECTION WITH EDUCATION SEMINARS PRESENTED BY JACKSON LEWIS P.C. ATTENDEES SHOULD CONSULT WITH COUNSEL BEFORE TAKING ANY ACTIONS AND SHOULD NOT CONSIDER THESE MATERIALS OR DISCUSSIONS THEREABOUT TO BE LEGAL OR OTHER ADVICE.

Guidance on New York's Ban on Salary Inquiries Issued

- ◆ New York State has issued guidance on its new law barring employers' direct and indirect inquiries about an employee's salary history that became effective on January 6, 2020. For New York City employers, the law must be read in conjunction with similar legislation already in effect.
- ◆ The New York State law prohibits employers from requesting or relying on the wage or salary history of an applicant in determining whether to offer an interview or employment or in arriving at the amount of salary to be offered.

Who Does The Law Apply To?

- ◆ The law applies to all public and private employers in the state, including New York City and public authorities.
- ◆ The law does not apply to bona fide independent contractors, freelance workers, or other contract workers, unless they perform work through an employment agency.

Who Does The Law Apply To?

- ◆ The law applies to all positions that will be based primarily in the State, even if the interview process takes place virtually, by telephone, or in another state. This includes for part-time, seasonal, and temporary workers, regardless of their immigration status.
- ◆ A general exception to the law exists for employers required to obtain salary history information pursuant to federal, state, or local law in effect as of January 6, 2020.

“Salary History” Under The Law

- ◆ Salary history information includes compensation and benefits.
- ◆ Employers are barred from seeking to obtain salary history information from sources other than the applicant, such as a former employer.
- ◆ Employers may ask for an applicant’s salary expectations for the position.

Current Employees

- ◆ The law applies to current employees as it relates to those **interviewing or being considered for a promotion.**
- ◆ But, employers may consider information already in the employer's possession, such as using a current employee's existing salary to calculate a raise.

What Not To Include In Applications

- ◆ Employment applications **should not** include questions seeking an applicant's current or past salary, unless required by law.
- ◆ An employer may not pose an “optional” salary history question on a job application seeking a voluntary response.

Show You Follow The Law!

- ◆ Employers are **encouraged** to consider proactively stating in job postings that the employer does not seek salary history information from applicants.

What To Do If An Applicant Voluntarily Discloses His / Her Salary Information

An applicant may voluntarily disclose salary history information if it is done without the prospective employer's prompting. If the applicant voluntarily discloses information without prompting, the employer may factor in the voluntarily disclosed information when determining the salary for that applicant.

While employers may seek to confirm salary history information voluntarily disclosed by the applicant without prompting, employers may not rely on prior salary to justify a pay difference between employees of different or various protected classes performing substantially similar work.

Keep In Mind

- ◆ The law does not require employers to post or set a pay scale for an open position.
- ◆ The guidance also confirms protections against retaliation, provides details to applicants on reporting perceived violations of the law to the New York State Department of Labor's Division of Labor Standards, and confirms the ability to bring a private right of action.

Reproductive Health Decision Making Rights

An employer may not discriminate nor take any retaliatory personnel action against an employee with respect to compensation, terms, conditions, or privileges of employment because of or on the basis of the employee's or dependent's reproductive health decision making, including, but not limited to, a decision to use or access a particular drug, device or medical service.

Further, an employer may not require an employee to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions, including use of a particular drug, device, or medical service.

An employer also may not access an employee's personal information regarding the employee's or the employee's dependent's reproductive health decision making, including but not limited to, the decision to use or access a particular drug, device or medical service without the employee's prior informed affirmative written consent.

Thank You

jackson|lewis[®]

With more than 900 attorneys practicing in major locations throughout the U.S. and Puerto Rico, Jackson Lewis provides the resources to address every aspect of the employer/employee relationship.

jacksonlewis.com

