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Employers: Don't Ask, Because Job Candidates Don't Have To Disclose Their Salary History

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Pay equity is a hot topic these days. High profile examples such as the controversy concerning the pay gap between the United States' Men's and Women's soccer teams that has dominated recent headlines abound. The attention focused by news media on pay inequality (e.g., higher pay for males) has reached state legislatures, including that of New Jersey. A bill has passed both houses of the New Jersey Legislature, which if signed by Governor Phillip D. Murphy, will amend the New Jersey Law Against Discrimination to disallow private employers from requesting salary history of job candidates.

Governor Murphy outlined the importance of this legislation in the preamble of Executive Order No. 1, signed in 2018, which banned any State entity from inquiring about a public job applicant's current or previous salaries, until the State entity has made a conditional offer of employment and explained the salary package to the applicant. Executive Order No. 1 cite the statistic that women holding full-time, year-round jobs are paid 82 cents for every dollar paid to men holding commensurate full-time, year round jobs. In addition, the Executive Order cited statistics that reveal a wage gap between white men and minority group women to be even greater. The Governor stated that closing this gap is important because the discriminatory wage gap "results in lost wages exceeding \$32 billion every year for New Jersey's women, hurting their ability to support themselves and their families." He further stated "asking job applicants about their salary histories inappropriately perpetuates the wage gap by allowing prospective employers to offer lower salaries to women than they otherwise would."

The proposed amendment to the New Jersey Law Against Discrimination forbids employers from asking about a job applicant's salary history, including the current salary of the potential candidate, compensation and benefits. It prohibits employers from using past salary information to determine a salary amount for the potential employee, and also forbids an employer from screening job applicants by using salary information to satisfy a minimum or maximum criteria. However, the employer may seek information about salary history if the employee "without employer coercion" provides the employer with a written authorization to do so.

Notably, the proposed amendment includes an anti-retaliation provision. An employer cannot retaliate against an employee who requests that a co-worker provide information about his or her salary in order to investigate the possibility of discrimination in pay and benefits.

Employers should note that this new legislation, which will likely be signed by Governor Murphy, will make New Jersey's laws regarding pay equity among the strongest in the nation. Employers should, as a preventative measure, immediately (if they have not done so already) stop asking potential employees for their salary history. Compliance would require not only eliminating this common question from job interviews, but removing this question from employment application forms. On the policy side, employers must insure they do not have any policies instituting a blanket ban on discussion of salaries among employees. To do this, employers should check company handbooks, and insure that supervisors are not preventing employee discussion of salary information.

Takeaway: Employers should take preventative action by eliminating all forms of questions which ask potential employees about their current and/or prior salaries.

If you are an employer with questions about pay equity issues in New Jersey, contact [Stephanie Girona](#) or any member of the Wilentz Employment Law Team at 732-352-9858.

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