

Wage & Hour

NYC Salary History Inquiry Ban Reverberating Nationwide

If you've applied for a U.S.-based job at finance giant Wells Fargo since Oct. 31, you probably haven't been asked about your current or previous salary.

Not coincidentally, that's the same day New York City banned employers from asking job applicants about their salary history. Companies as large as Wells Fargo are reacting to New York's law and similar measures around the country by overhauling their hiring process.

Wells Fargo as of Halloween stopped asking about current or past salary in all external hiring in the U.S., Diana Rodriguez, senior vice president of corporate communications for the financial services company, told Bloomberg Law in an email. She said the company is committed to "fair and equitable compensation," diversity and inclusion, and to meeting requirements in the Big Apple as well as other jurisdictions with existing or pending legislation on salary history inquiries.

New York City's law prohibits employers from asking candidates about what they earned in previous positions until after the employer extends a job offer. Similar laws have gone into effect recently in other jurisdictions.

The intent is to reduce the impact of historical pay discrimination on women and minorities. If a person's future pay is always to be determined at least in part by what she was paid in the past, the thinking goes, she will never catch up from having been underpaid to begin with.

Need to 'Be More Shrewd' in Salary Negotiations

Few would argue with the principle of equality of opportunity, but the legal mandate does pose a challenge for employers big and small to change the way they've always done things. For example, Sara Whitman, managing director and chief culture czar at New York City-based strategic communications firm Peppercomm, has had to retrain senior managers to ask candidates about their "salary requirements" instead of their salary history. They also have to tell recruiters to be sure not to ask the forbidden question, she told Bloomberg Law.

This change has encouraged candidates to ask for more money than the market is offering, she said, "so we have had to be more shrewd in how we negotiate." In only one or two cases, however, candidates have gotten overconfident and made such a high request that Peppercomm had to reject it out of hand, she said.

Very few people at Peppercomm would have asked job candidates their salary history even before the new New York City law, Whitman said, but "the minute we heard this was going into effect, we stopped asking about salary history."

For Natasha Bowman, president and founder of talent management firm Performance ReNEW, employers that have developed a compensation strategy based on the roles they are recruiting for shouldn't be affected by New York City's law.

"I look at the role and the responsibilities of the position, and what a qualified candidate looks like, and the market data" resulting from those factors to develop a compensation offer, Bowman told Bloomberg Law. "Therefore, it should not matter what they have made previously."

Bowman said that to avoid wasting an interview on someone who expects more than you can pay, it is still legitimate to ask the candidate about his or her salary expectations.

The law also allows candidates to volunteer their salary information, Bowman noted.

'Turn Off' the Salary Question

Laws against salary history inquiries are spreading, and the national implications are considerable.

California-based HireRight, a background-check firm, has turned off the salary history question on its online platform for all clients nationwide, Dawn Hirsch, chief human resources officer, told Bloomberg Law. Clients can ask to turn it back on, but only 1 percent do so, she said.

California is set to adopt its own ban on salary history inquiries. Starting Jan. 1, employers in the Golden State won't be able to seek applicants' salary history, although applicants can voluntarily disclose their pay history.

Not asking is "a best practice to help address gender pay inequity. Employers realize it's a trend that's catching on," Hirsch said.

HireRight has taken salary history out of its own applicant tracking system and is removing it from hiring managers' training materials, Hirsch said. The result of these laws is to put pressure on employers to develop "tight and accurate" compensation ranges and present them to candidates upon request in jurisdictions that require them to do so, she said.

Gotham Leading the Way? The Big Apple may be way out in front of the pack in some ways.

"The New York City law is really, really broad about how it would prevent an employer from inquiring about salary history," in that it bars employers from searching public records for a job candidate's salary history,

Neoma Ayala, special counsel in Hackensack, N.J.-based law firm Cole Schotz's litigation and employment law departments, told Bloomberg Law. Ayala's firm is mainly management-side but does some employee-side work.

"There can be really stiff penalties" for noncompliance with the New York City law, she said, and the statute also allows a private cause of action, meaning employers can face civil litigation.

It "remains to be seen" whether the law will have its intended effect of reducing pay inequity, Ayala said,

pointing out that factors like unconscious bias also come into play.

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