

KD Employment Law Alert: NYC Set to Ban Salary History Inquiries – What Employers Need to Know

By **Keith J. Gutstein**, co-managing partner, Long Island Office and **Ellen R. Storch**, partner at Kaufman Dolowich & Voluck, LLP

New York City employers will no longer be able to ask job applicants about their salary history if, as expected, Mayor de Blasio signs a new bill.

The new law amends the New York City Human Rights Law to make questioning a candidate about their wage or benefit history employment discrimination. Violating the law could result in the New York City Commission on Human Rights issuing a civil penalty of up to \$125,000 for an unintentional violation, and up to \$250,000 for a willful violation. An individual can also bring a private suit under the law and could recover a pay award, compensatory damages, punitive damages and attorneys' fees.

Prospective employers cannot ask applicants about their current or prior compensation on job applications, during interviews or while negotiating pay once an offer is made. Employers are also prohibited from asking an applicant's current or former employer about their compensation.

However, employers can ask an applicant how much they are seeking, and can tell an applicant what the salary range is for the position. And, if an applicant voluntarily discloses their compensation history, a prospective employer can use that information in determining what salary and benefits to offer. Following such voluntary disclosure, the employer is permitted to verify the compensation information provided.

The new law will take effect 180 days after Mayor de Blasio signs it, which will likely happen shortly.

Employers interviewing applicants for positions that would require the employee to perform work in the city should assume that they are covered by the law.

Employer takeaways:

- When negotiating compensation with a job applicant, do not ask what they are currently earning or what they have previously earned.
- Focus compensation discussions on what salary range has been set for the position, or on what the applicant's expectations are.
- Train everyone who conducts interviews on permissible inquiries.
- Remove from applications any questions about current or prior compensation.