



COMPLIANCE BULLETIN

A few notable laws around the country that took effect 1/1/2020:

New Jersey's Salary History Ban Law took effect on Wednesday. The law makes it illegal for an employer to:

1. Screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries or benefits; or
2. Require that the applicant's salary history satisfy any minimum or maximum criteria.
3. Consider an applicant's refusal to voluntarily reveal prior compensation information as a factor in any employment decision.

The Law allows employers to:

1. Consider an applicant's salary history in determining salary, benefits, and other compensation, and to verify the applicant's salary history, if the applicant voluntarily, "without prompting or coercion," provides the employer with salary history; and
2. Ask an applicant to provide the employer with a written authorization to confirm salary and benefits history, after the employer has made an offer of employment that includes an explanation of the overall compensation package.
3. Ask an employee about salary expectations without inquiring as to salary history.

The Law does not apply to:

- Applications for internal transfer or promotion (e.g., job postings), or the employer's use of previous knowledge obtained as a consequence of the applicant's prior employment with the employer;
- Any actions taken by an employer pursuant to any federal law or regulation that expressly requires the disclosure or verification of salary history for employment purposes, or requires knowledge of salary history to determine an employee's compensation;
- Background checks seeking non-salary-related information, provided employers specifically state that salary history information is not to be disclosed, and provided that, if the employer nevertheless receives salary history information, the employer shall not retain that information or consider it when determining salary, benefits or other compensation;
- Salary history information that is publicly available; however, an employer may not "retain or consider" that information when determining the salary, benefits or other compensation to be offered to the applicant, unless the applicant voluntarily, without prompting or coercion, provided the employer with salary history.
- Inquiries regarding an applicant's experience with incentive and commission plans and the terms and conditions of the plans, provided the position includes incentives or commissions as a component of compensation, and provided the employer does not ask about prior incentive or commission earnings.

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- Salary history information acquired from an employment agency if the applicant has provided the agency with written authorization to share that information with the employer;
- The Law does not prohibit employers from providing applicants with wage or salary rates set for the job by a collective bargaining agreement or by civil service or other laws, or from paying those rates if the applicant is hired.
- The Law does not prohibit employers that do business in multiple states from including an inquiry regarding salary history on an employment application, so long as the application states that applicants who will be working in New Jersey should not answer that question.
- An employer that violates the Law faces liability for a civil penalty of up to \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each subsequent violation.
- Notably, the Law also amends the New Jersey Law Against Discrimination (“LAD”), making it a violation of the LAD to:
 - Screen a job applicant based on the applicant’s salary history, including wages, salaries or benefits, or
 - Require that the applicant’s salary history satisfy any minimum or maximum criteria.

The LAD’s remedies of punitive damages, however, do not apply to an unlawful inquiry as to an applicant’s salary history.

Next Steps for New Jersey Employers

- If your employment application includes questions about the applicant’s salary history, consider either deleting them or, if you are a multistate employer, including a clear instruction that New Jersey applicants should not provide this information.
- Be certain that you expressly direct your background check vendors not to ask for or share an applicant’s salary history information with the employer, unless the applicant has expressly authorized the disclosure.
- Conduct training with your recruiters and managers about the new law prohibiting them from asking applicants for salary history information prior to making an offer of employment that includes the proposed compensation package.
- Develop protocols for hiding, removing or discarding salary information that you receive and that must not be considered.

Minimum Wage Increases

The minimum wage in New Jersey for most employers will increase to \$11.00 an hour effective January 1, 2020. For seasonal and small employers (fewer than six employees), the minimum wage will increase to \$10.30 an hour. This is the first in a series of increases that will result in a \$15 minimum wage in New Jersey by 2024.

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New Jersey has also put in place a “training wage.” As of Wednesday, workers enrolled in a qualified training program must be paid a “training wage” equal to at least 90 percent of the minimum wage at the time, for up to the employee’s first 120 hours. Importantly, this rate may only be used where the employer utilizes “an established employer on the job or other training program” meeting certain standards, where the trainee does not displace another employee, and where it is the employer’s intent at the time of hire to retain the employee beyond the training period.

New Notice Distributions (Posting Is Not Enough!)

Conscientious Employee Protection Act (CEPA)

As of January 1, 2020, employers with 10 or more employees, regardless of whether those employees work within or outside New Jersey, must distribute the required notice under the Conscientious Employee Protection Act (CEPA). The CEPA Notice must be provided in both English and Spanish to New Jersey employees, and must be distributed every year. This distribution may take the form of email, provided the subject employees typically have access to email in the course of their job duties. Otherwise, hardcopy distribution is required.

Gender Equity Notice

On or before December 31, employers with 50 or more employees (including employees both inside and outside New Jersey), should have provided employees with New Jersey’s newly required Gender Equity Notice.

The Gender Equity Notice could be distributed to New Jersey employees by: _____

- Email;
- Printed material “including, but not limited to, a pay check insert, brochure or similar informational packet provided to new hires, an attachment to an employee manual or policy book; or flyer distributed at an employee meeting”; or
- An internet or intranet website “if the site is for the exclusive use of all workers, can be accessed by all workers, and the employer provides notice to the workers of its posting.”

Importantly, the Gender Equity Notice must be accompanied by an acknowledgment of receipt (signed or e-verified) by the employee, which must be returned within 30 days of receipt of the Notice. The law also requires that the acknowledgement be signed every time that the Notice is distributed. Employers who have failed to distribute the notice should rectify the issue as quickly as possible.

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