

New Jersey Becomes the Latest State to Enact a Ban on Salary History Inquiries

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On July 25, 2019, New Jersey became the latest state to join the movement banning salary history inquiries when Acting Governor Sheila Oliver signed [NJ A1094](#) (“Law”). The Law, which becomes effective January 1, 2020 (i.e., first day of the sixth month following enactment):

- makes it illegal for an employer to:
 - screen a job applicant based on the applicant’s salary history, including, but not limited to, the applicant’s prior wages or benefits;
 - require that the applicant’s salary history satisfy any minimum or maximum criteria; or
 - use an applicant’s refusal to volunteer compensation information as a factor in any employment decision;
- permits employers to:
 - 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 information; and
 - 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; and

- 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 discards and does not consider it;
 - salary history information that is publicly available; however, an employer may not "retain or consider" that information when determining the compensation package to be offered to the applicant;
 - 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; and
 - 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.

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.

The Law gives enforcement authority to the New Jersey Department of Labor and Workforce Development. 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.

Of importance, 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 and attorneys' fees, however, do not apply to an unlawful inquiry as to an applicant's salary history.

What New Jersey Employers Should Do Now

- If your employment application includes questions asking for the applicant's salary history, consider either deleting them or, if you are a multistate employer, including a prominent instruction that New Jersey applicants should not provide this information.
- Ensure that instructions to background check companies expressly direct the vendor not to ask for—or, if obtained, not to share—an applicant's salary history information.
- While the Law permits employment agencies to acquire an applicant's salary history, ensure that the agency does not share that data with the company unless the applicant has authorized the agency, in writing, to do so.
- Train recruiters and managers that they may not ask applicants for salary history information prior to making an offer of employment that includes the proposed compensation package, and instruct them on how to respond if an applicant volunteers such information.
- Develop protocols for deleting/discarding/blacking out any salary information that you receive but are prohibited from considering.

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