

Governor Cuomo Signs Executive Orders Concerning Salary Issues

New York Governor Andrew Cuomo has unveiled his annual [State of the State](#) proposals for 2017, which include new salary reporting requirements for state contractors, a prohibition on salary history inquiries to job applicants by state agencies, and proposed legislation aimed at punishing wage theft, among other initiatives.

[Executive Order 162](#), signed by Governor Cuomo on January 9, 2017, will require state contractors and subcontractors to report job title and salary data for all employees working on state contracts, in addition to the data on gender, race, and ethnicity that is currently required. If an employer cannot identify the individuals working directly on a State contract, it will be required to report such information for its entire workforce. State agencies and authorities are required to include provisions mandating such reporting in all contracts, agreements, and procurements issued and executed on or after June 1, 2017. Executive Order 162 requires monthly reporting on all contracts in excess of \$100,000 and quarterly reporting all contracts in excess of \$25,000. The form of these reports, and the manner for reporting, has been delegated to the New York State Department of Economic Development, which will be issuing regulations pursuant to this Executive Order.

Governor Cuomo's issuance of Executive Order 162 comes on the heels of the [September 2016 amendments by the United States Equal Employment Opportunity Commission to the Employer Information Report](#) (or "EEO-1"). The new EEO-1 would require employers with 100 or more employees and government contractors with at least 50 employees and a contract of at least \$50,000 to report summary pay data in aggregate form according to a set of pay bands starting in March 2018.

Under a separate Executive Order also signed by Governor Cuomo on January 9, 2017 ([Executive Order 161](#)), state agencies are prohibited from inquiring about or relying on a job applicant's salary history until a conditional offer of employment has been made. The announcement is the latest in an [emerging trend in cities and states to prohibit or restrict salary inquiries](#). Governor Cuomo's Executive Order, which applies only to State agencies, suggests he will support [S.24](#), a state bill introduced in January that would prohibit salary inquiries by private employers. New York City Mayor Bill de Blasio executed a [similar measure](#) in November 2016 prohibiting salary inquiries by City agencies. The New York City Council, with Mayor de Blasio's support, is also expected to pass [legislation](#) prohibiting such inquiries by private employers.

Governor Cuomo also announced [legislation](#) targeting wage theft. One bill would hold the top ten shareholders of out-of-state limited liability companies ("LLCs") personally liable for wage theft claims, extending an existing law that applies to in-state LLCs and both in- and out-of-state corporations. According to Cuomo, the legislation is intended to provide relief for claimants seeking damages from bankrupt companies. Governor Cuomo also announced legislation to "empower the Labor Commissioner to directly enforce all wage liabilities on behalf of workers with unpaid wage claims" but did not provide further details.

Finally, Governor Cuomo announced [legislation](#) that would require the state to give preference to American-made goods and products in any new procurement contracts of \$100,000 or more. To qualify as "American-made" under the Governor's proposal, "end manufacturing processes should take place in the United States and more than sixty

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percent of the components of the manufactured good should be of domestic origin."

Governor Cuomo's Executive Orders and announcements are another sign of a continuing trend by federal, state and local jurisdictions focusing on compensation related issues. State contractors in particular should be cognizant of the new reporting requirements, which will likely be more burdensome and take effect sooner than their Federal counterparts.

This post was authored by [Matt Lampe](#), [Martin Schmelkin](#), and [Michael Casertano](#) of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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