

New York City, State Consider Bans on Salary History Inquiries

New York City is poised to adopt legislation that would prohibit employers from asking about a prospective employee's salary history and New York State may follow suit, reflecting an emerging trend in cities and states across the country.

Pending before the New York City Council (the "Council") is [Intro. No. 1253](#), which would amend the New York City Human Rights Law to make it an unlawful discriminatory practice for an employer to ask a prospective employee about salary history, search publicly available salary records for that information, or rely on a prospective employee's salary history in determining salary amount "at any stage in the employment process." The bill, which was introduced by Public Advocate Letitia James in August 2016, would allow an employer to rely on salary history, however, if the applicant "unprompted, willingly disclosed such salary history to such employer" and would exempt employers who are authorized to ask about or verify salary information pursuant to federal, state, or local law. The exact provisions of the bill, however, are subject to amendment prior to adoption.

Intro No. 1253 already has the support of 35 of the Council's 51 Members, who have signed on as co-sponsors. Mayor Bill de Blasio has also expressed his intent to support for the bill. Mayor de Blasio implemented similar restrictions on city agencies in November through an [Executive Order](#). Moreover, at a December, 13, 2016, committee hearing on the bill, the New York City Commission on Human Rights endorsed Intro No. 1253, lauding the bill as having the potential to close gender and racial wage gaps.

At the state level, Senator Brad Hoylman introduced similar legislation on January 4, 2017. [S. 24](#) would amend the New York State Human Rights Law by making it an unlawful discriminatory practice for an employer to seek the salary history of a prospective employee for an interview or as a condition of employment. Because this bill was just introduced, its prospects are uncertain at this point.

These proposals reflect an emerging trend in state and local legislatures to restrict salary history inquiries by employers. On August 1, 2016, Massachusetts became the first state to ban employers from asking for an applicant's salary history prior to extending an offer with compensation. Enacted as part of an amendment to the state's equal pay act, [S.B. 2119](#) will take effect on July 1, 2018. Likewise, on December 8, 2016, the Philadelphia City Council passed a [law](#) making it an unlawful employment practice for an employer to inquire about an applicant's wage history, retaliate against an applicant for failure to disclose such history, or rely on the applicant's wage history in determining salary at any stage in the employment process. The Philadelphia law will take effect 120 days after it is signed. Legislators in the District of Columbia and New Jersey introduced [similar bills](#) in September 2016, and there is also a federal bill, [H.R. 6030](#), pending in the House of Representatives.

The push to prohibit salary history inquiries follows a series of campaigns that have resulted in the enactment of paid sick leave laws and laws restricting the use of criminal background and credit histories in New York City and in other state and local jurisdictions. Collectively, these measures are a reminder that employers must remain cognizant of developments in state and local employment laws, which can be significantly more restrictive than their federal counterparts.

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