"What Was Your Last Salary?" – Asking Job Applicants Their Salary History May Soon Be Unlawful for NYC Employers

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Job applicants have often been frustrated with the question, "What is your current or last salary?" This is especially true for an applicant that feels he or she is or was underpaid, and is concerned that prospective employers may use one's salary history to perpetuate the cycle of underpayment. In New York City, according to a 2016 study, Hispanic, Black, and Asian women experience a 54 percent, 45 percent, and 37 percent wage gap compared to white men, respectively. Letitia James, Policy Report: Advancing Pay Equity in New York City, The Public Advocate for the City of New York (April 2016), http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/opa_pay_equity_report_final.pdf.

In an effort to address this inequality, on April 5, 2017, the New York City Council approved a bill that aims to "reduce the likelihood that
women will be prejudiced by prior salary levels and help break the cycle of gender pay inequity." See http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2813507&GUID=938399E5-6608-42F5-9C83-9D2665D9496F&Options=ID%7cText%7c&Search=1253. The bill, Int. No. 1253-A, seeks to amend New York City's Administrative Code to make it an unlawful employment practice for an employer "to inquire about the salary history of an applicant for employment" or "to rely on the salary history of an applicant in determining the salary, benefits or other compensation" for a job applicant during the hiring process.

The bill creates certain exceptions for employers. If the bill becomes law, employers would be limited to engaging in discussions with applicants about their expectations for salary, benefits and other compensation, as well as inquiring about what, if any, compensation an applicant may forfeit or be canceled if he or she resigns (such as unvested compensation) from his or her current job. Employers also would be permitted to consider an applicant's salary history if it is voluntarily disclosed by the applicant without prompting. The change to the Administrative Code would not impact applicants for internal transfer or promotion with their current employer, actions taken pursuant to federal, state or local law that specifically authorizes the disclosure or verification of salary history, attempts to by the employer to verify an applicant's disclosure of non-salary related information or public employee positions for which salary is determined pursuant to procedures established by collective bargaining.

The bill will become effective 180 days after it is signed by the Mayor. However, similar laws in other jurisdictions have been challenged as being an unlawful restriction on the freedom of speech.

For more information, both employees and employers can contact Wigdor LLP at (212) 257-6800.

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