

CLIENT ALERT

New Jersey Enacts Salary History Ban

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On July 25, 2019, New Jersey Lt. Gov. Sheila Oliver signed into law [a bill](#) that bars employers from screening job applicants for employment in New Jersey based on salary history including, but not limited to, their prior wages, commission, or benefits, effective January 1, 2020. Nor may employers require that applicants' salary history satisfy any minimum or maximum criteria. If an applicant "voluntarily, without employer prompting or coercion," provides his or her salary history information, the employer may consider and verify it. An applicant's refusal to volunteer this information, however, may not be considered in any employment decisions. Employers in New Jersey may still confirm an applicant's salary history upon the applicant's written authorization, after an offer of employment that includes an explanation of the overall compensation package. Notably, the law also bars employment agencies from sharing this information with any employer without the express written consent of the applicant. Employers face civil penalties of up to \$1,000 for a first violation, up to \$5,000 for the second violation and up to \$10,000 for each subsequent violation, collectible in a summary proceeding conducted by the New Jersey Commissioner of Labor and Workforce Development.

The new statute recognizes several additional exceptions. For example, employers may still act pursuant to applicable federal law or regulations that expressly require disclosure, verification or knowledge of salary history. Employers may also attempt to obtain, or verify an applicant's disclosure of, non-salary related information when conducting a background check. When the compensation for the employment opening includes an incentive or commission component, employers may inquire into an applicant's previous experience with incentive and commission plans and the terms and conditions of such plans, as long as they do not inquire into the amount of earnings received. New Jersey employers that employ persons or take applications for employment in at least one state other than New Jersey may include a salary history question on their employment application. Such inquiry must, however, be immediately preceded by a statement instructing applicants for positions the physical location of which will be in whole, or in substantial part, in New Jersey not to answer the salary history inquiry.

This new law is the latest in a nationwide trend of legislation aimed at combating the gender and racial pay gaps and improving [pay equity](#) across the nation, [most recently in New York State](#).

New Jersey employers should proactively alert their hiring staff regarding this new legislation, including informing and training any employees involved in recruitment and selection. Third party recruiters and background check providers should be notified that they must not supply such information regarding applicants for employment. Employers in New Jersey should also examine and where necessary modify any application forms or systems that include inquiries that could be perceived to seek salary history information. Employers with operations in New Jersey and in other states with pay equity laws should thoroughly review their practices to confirm compliance with all such laws. Laws of each jurisdiction that affect their operations may have their own nuanced requirements, and compliance with laws of one jurisdiction does not guarantee compliance with laws of other jurisdictions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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