

## CLIENT ALERT

### New York City Restricts Salary History Inquiries to Applicants for Employment

May 17, 2017

Effective October 31, 2017, employers in New York City will generally be prohibited from inquiring about the salary history of external applicants for employment under an amendment to the New York City Human Rights Law. Entitled the "Local Law to Amend the Administrative Code of the City of New York, in Relation to Prohibiting Employers from Inquiring About or Relying on a Prospective Employee's Salary History" (HRL amendment), the law was signed by Mayor Bill DeBlasio on May 4, 2017. Under the HRL amendment, employers may not inquire about an external applicant's salary history or rely on an applicant's salary history "in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract," unless an exception applies.

Notwithstanding these restrictions, employers may "without inquiring about salary history" engage in discussions with external applicants regarding "their expectations with respect to salary, benefits and other compensation, including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer."

The HRL amendment does not apply to attempts by employers to verify an external applicant's "disclosure of non-salary information or conduct of a background check," where disclosure of salary history in that process is not "relied upon for purposes of determining the salary, benefits or other compensation of such applicant during the hiring process, including the negotiation of a contract." Employers in New York City invoking the exception regarding background checks should observe the applicable restrictions placed on consumer credit history inquiries by the New York City Stop Credit Discrimination in Employment Act, and on criminal records inquiries by the New York City Fair Chance Act.

The City of Philadelphia recently enacted a similar ban on employer inquiries about prior salary. That measure is the subject of legal challenge in a lawsuit filed by the Chamber of Commerce for Greater Philadelphia. The City of Philadelphia agreed to delay the enforcement of its ordinance while the lawsuit was pending. While the HRL amendment may be subject to such challenge, New York City employers should still ensure that they are prepared to comply with it by October 31, 2017.

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

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