

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1094
STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED FEBRUARY 14, 2019

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SYNOPSIS

Prohibits employer inquiries about worker's wage and salary experience.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Labor Committee.

AN ACT concerning employer inquiries regarding salary history and amending and supplementing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. Except as otherwise provided in this section, it shall be an unlawful employment practice for any employer:

(1) to screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries or benefits; or

(2) to require that the applicant's salary history satisfy any minimum or maximum criteria.

b. Notwithstanding the provisions of subsection a. of this section, an employer may:

(1) consider salary history in determining salary, benefits, and other compensation for the applicant, and may verify the applicant's salary history, if an applicant voluntarily, without employer prompting or coercion, provides the employer with salary history. An applicant's refusal to volunteer compensation information shall not be considered in any employment decisions; and

(2) request that an applicant provide the employer with a written authorization to confirm salary history, including, but not limited to, the applicant's compensation and benefits, after an offer of employment that includes an explanation of the overall compensation package has been made to the applicant.

c. This section shall not apply to:

(1) applications for internal transfer or promotion with an employee's current employer, or use by the employer of previous knowledge obtained as a consequence of prior employment with the employer;

(2) any actions taken by an employer pursuant to any federal law or regulation that expressly requires the disclosure or verification of salary history for employment purposes, or requires knowledge of salary history to determine an employee's compensation;

(3) any attempt by an employer to obtain, or verify a job applicant's disclosure of, non-salary related information when conducting a background check on the job applicant, provided that, when requesting information for the background check, the employer shall specify that salary history information is not to be disclosed. If, notwithstanding that specification, salary history information is disclosed, the employer shall not retain that information or consider it when determining the salary, benefits, or other compensation of the applicant; or

(4) employer inquiries regarding an applicant's previous experience with incentive and commission plans and the terms and conditions of the plans, provided that the employer shall not seek or require the applicant to report information about the amount of earnings of the applicant in connection with the plans, and that the employer shall not make any inquiry regarding the applicant's previous experience with incentive and commission plans unless the employment

opening with the employer includes an incentive or commission component as part of the total compensation program.

d. An applicant may provide salary history information, including information regarding the applicant's experience with incentive or commission plans, to an employment agency contacted by the applicant for assistance in searching for and identifying employment opportunities, but the employment agency shall not share the information with potential employers without the express written consent of the applicant.

e. (1) Any employer who violates this section shall be liable for a civil penalty in an amount not to exceed \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

(2) If an applicant for a job is a member of a protected class as defined in subsection t. of section 11 of P.L.1945, c.169 (C.10:5-12), an employer shall be subject to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) for any violation of this section.

f. Nothing in this section shall be construed as prohibiting an employer from offering an applicant for a job information regarding wage or salary rates set for the job by collective bargaining agreements or by civil service or other laws, or from paying those rates if the applicant is hired.

g. Nothing in this section shall be construed to prohibit an employer who does business, employs persons, or takes applications for employment in at least one state other than New Jersey, from including an inquiry regarding salary history on an employment application, so long as immediately preceding the salary history inquiry on the employment application it states that an applicant for a position the physical location of which will be in whole, or substantial part, in New Jersey is instructed not to answer the salary history inquiry.

h. Nothing in this section shall be construed to prohibit an employer from acquiring salary history information that is publicly available, but an employer shall not retain or consider that information when determining the salary, benefits, or other compensation of the applicant unless the applicant voluntarily, without employer prompting or coercion, provides the employer with salary history. An applicant's refusal to volunteer compensation information shall not be considered in any employment decisions.

2. (New section) a. Except as otherwise provided by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill), if a job applicant is a member of a protected class as defined in subsection t. of section 11 of P.L.1945, c.169 (C.10:5-12), it shall be an unlawful employment practice in violation of P.L.1945, c.169 (C.10:5-1 et seq.) for an employer:

(1) to screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries, or benefits; or

(2) to require that the applicant's salary history satisfy any minimum or maximum criteria.

b. An award of punitive damages shall not be an available remedy for a violation of this section.

3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read as follows:

5. Notwithstanding any provision of law to the contrary, relief for having been required to retire in violation of the provisions of section 11 of P.L.1945, c. 169 (C.10:5-12), shall be available to the person aggrieved by that violation solely through the procedure initiated by filing a complaint with the Attorney General under the provisions of P.L.1945, c. 169 (C.10:5-1 et seq.).

Notwithstanding any provision to the contrary of section 16 of P.L.1945, c. 169 (C.10:5-17) or any other law, relief ordered for or granted to a person in connection with [his] the person being required to retire in violation of the provisions of section 11 of P.L.1945, c. 169 (C.10:5-12) shall be limited to [his] the person's reinstatement with back pay and interest.

This section shall not apply to a violation regarding an inquiry as to an applicant's salary history pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.1985, c.73, s.5)

4. Section 16 of P.L.1945, c.169 (C.10:5-17) is amended to read as follows:

16. If, upon all evidence at the hearing, the director shall find that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in [this act] P.L.1945, c.169 (C.10:5-1 et seq.), the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or unlawful discrimination and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and privileges to all persons, as, in the judgment of the director, will effectuate the purpose of [this act] P.L.1945, c.169 (C.10:5-1 et seq.), and including a requirement for report of the manner of compliance. If the conduct violative of [this act] P.L.1945, c.169 (C.10:5-1 et seq.) constitutes any form of unlawful economic discrimination prohibited in subsection 1., m., or n. of section 11 of P.L.1945, c.169 (C.10:5-12), or any form of unlawful employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative action taken by the director may include the award of three-fold damages to the person or persons aggrieved by the violation. The director shall have the power to use reasonably certain bases, including but not limited to list, catalogue or market prices or values, or contract or advertised terms and conditions, in order to determine particulars or performance in giving appropriate remedy. In addition to any other

remedies provided by P.L.1945, c.169 (C.10:5-1 et seq.), a prevailing complainant may recover damages to compensate for emotional distress caused by the activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et seq.) to the same extent as is available in common law tort actions. In any case in which the director, Attorney General, or appropriate organization is a complainant, on behalf of named or unnamed individuals or a class of individuals, any of the remedies or relief allowed by [this act] P.L.1945, c.169 (C.10:5-1 et seq.) may be awarded or applied to the named or unnamed individual victims of discrimination. If, upon all evidence, the director shall find that the respondent has not engaged in any such unlawful practice or unlawful discrimination, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

This section shall not apply to a violation regarding an inquiry as to an applicant's salary history pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2018, c.9, s.4)

5. Section 6 of P.L.1979, c.404 (C.10:5-27.1) is amended to read as follows:

6. In any action or proceeding brought under [this act] P.L.1945, c.169 (C.10:5-1 et seq.), the prevailing party may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to the respondent unless there is a determination that the complainant brought the charge in bad faith. If the complainant's case was initiated by a housing authority on behalf of a tenant for a violation of paragraph (4) of subsection g. or paragraph (4) of subsection h. of section 11 of P.L.1945, c.169 (C.10:5-12) and the complainant prevailed, reasonable costs, including attorney fees, of the housing authority may be assessed against a nonprevailing respondent. If the complainant's case was presented by the attorney for the division and the complainant prevailed, the reasonable costs, including attorney fees, of such representation may be assessed against a nonprevailing respondent.

Notwithstanding any other provision of law to the contrary, an award of an attorney's fee in accordance with this section shall not be available as a remedy to violations of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2002, c.82, s.4)

6. This act shall take effect on the first day of the sixth month next following enactment.