

Menu



Search

News Campaigns Brochures Testimony

Select ▼

- Salary History Ban
- You Have Rights NYC
- DV Protections
- Discriminatory Harassment
- NYC For Women
- I Am Muslim NYC
- Equal Bathroom Access
- Fair Chance Act
- Credit Check Law

Salary History Law: Frequently Asked Questions

For fact sheets for employers/HR or job applicants, visit the #SalaryHistoryNYC page.

I. General scope of coverage under the Law

II. What employers can and cannot do to learn about applicants' salary expectations

III. How "compensation" is defined

IV. Miscellaneous

V. Best Practices

I. General scope of coverage under the Law

Who is protected under the Law?

Most applicants for jobs in New York City are protected, regardless of the size of the employer.

Which employers does the Law apply to?

The Law applies to employers of any size that are hiring job applicants in New York City.

Can you ask about salary history for a job outside of New York City or at an interview held outside of New York City?

If an unlawful discriminatory practice, including an inquiry about salary history, occurs during an in-person conversation in New York City, there will likely be jurisdiction because the impact of the unlawful discriminatory practice is felt in New York City. If an unlawful discriminatory practice occurs outside of New York City, there could be jurisdiction if the impact of the unlawful discriminatory practice is felt in

New York City. Entities should apply the same jurisdictional analysis in this context that they would involving other areas of the City Human Rights Law (e.g., in the employment context, residency in New York City alone, without more, is generally not enough to establish impact in New York City).

Does the Law apply to applicants for internal transfer or promotion with their current employer?
No.

Does the Law apply to applicants for public sector jobs for which salary is governed by a collective bargaining agreement?
No.

Does the Law apply to people, including former employers, who disclose information about salary history to the hiring employer?

Generally, no. The Law governs inquiries and searches for records about an applicant's salary history by the hiring employer; however, others can also be held liable if they intentionally aid and abet a violation of the Law.

What is the effective date of the Law?

Salary history protections under the NYC Human Rights Law are effective October 31, 2017. They are not retroactive.

II. What employers can and cannot do to learn about applicants' salary expectations

What information can a job application request with respect to salary expectations?

A job application can request information about applicants' compensation expectations or demands, but may not include a request for information about applicants' salary history, even if the employer makes clear that a response is voluntary. In addition, an employer who uses a boilerplate application that requests salary history information will not avoid liability simply by adding a disclaimer that individuals in New York City or applying for jobs located in New York City need not answer the question.

May an employer seek information about salary history from a source other than the applicant?

Employers may not, for the purpose of learning an applicant's salary history, ask people from the applicant's current or former place of employment or search public records for information about the applicant's salary history. If an employer accidentally uncovers information about an applicant's salary history by, for example, searching publicly available information about the applicant, the employer may not rely on that information in determining what to offer the applicant in salary, benefits, and other compensation.

May an employer search for information about the salaries paid to individuals with the applicant's specific title at the applicant's current or former place of employment on websites that collect such salary information?

No. Employers may search for general information about industry compensation standards but may not search for specific information about salary history that is intended to uncover the salary of a specific applicant.

Will an employer be liable if it unintentionally stumbles on information about an applicant's salary history?

No. However, the employer may not rely on the salary history information in determining what to offer the applicant in salary, benefits, and other compensation.

What if applicants volunteer information about their salary history?

If a job applicant voluntarily and without prompting discloses their salary history, the employer may then discuss or inquire about the applicant's salary history, verify the applicant's representations about salary history, and rely on information about the applicant's salary history in determining what to offer the applicant in salary, benefits, and other compensation.

What does it mean for an applicant's voluntary disclosure of salary history to be "without prompting"?

A disclosure of salary history is "without prompting" if the average job applicant would not think that the employer encouraged the disclosure based on the overall context and the employer's words or actions.

Can employers run background checks that include information about applicants' salary history?

Employers should be mindful that the NYC Human Rights Law places limitations on when and under what circumstances employers may initiate background checks related to criminal history and credit history. In circumstances where an employer is legally permitted to perform a background check before a conditional offer has been made, or decides to run a background check after a conditional offer is made, the Commission recommends that employers specify to reporting agencies that information about salary history be excluded from the report. Inquiries into salary history violate the Law regardless of whether such inquiries are made before or after a conditional offer unless they are made to verify representations offered by an applicant who disclosed their salary history voluntarily and without prompting. If an employer accidentally uncovers information about an applicant's salary history, the employer may not rely on that information in determining what to offer the applicant in salary, benefits, and other compensation.

May employers request a prospective employee's W-2 to verify representations made about salary history?

Employers may only ask for a W-2 to verify representations made about salary history if the applicant, voluntarily and without prompting, offers information about salary history. However, in all other circumstances, even after a conditional offer is made and compensation levels are set, an employer cannot ask for a W-2 unless otherwise required by local, state, or federal law.

III. How "compensation" is defined**What do "benefits" and "other compensation" include?**

"Benefits" and "other compensation" should be interpreted broadly and may include many factors, including, but not limited to, a car allowance, retirement plan, or bonuses.

Can an employer ask about the commissions an applicant earned?

No. Employers should not ask about the amount of commission an applicant earned, but may ask about objective indicators of performance such as the volume, value, or frequency of sales.

Can an employer discuss deferred compensation or unvested equity that an applicant would have to forego in taking a new job?

Yes. Employers may ask whether an applicant will have to forfeit deferred compensation or unvested equity from their current employer and the value and structure of the deferred compensation or unvested equity, request documentation to verify the applicant's representations, and consider such information in making the applicant an offer.

In industries where employees are compensated based on a profit percentage, may employers ask about the applicant's current or former profit percentage?

No. An employer cannot ask about an applicant's current or former profit percentage, but can ask about the size of the applicant's book of business, profits generated, or other objective indicators of performance.

IV. Miscellaneous

Is there an exemption for actions taken by an employer pursuant to foreign or international law that specifically authorizes the disclosure or verification of salary history or requires knowledge of salary history?

No. There is no specific exemption for actions taken in accordance with foreign or international law.

Is there an exemption for private positions for which compensation is set pursuant to procedures established by collective bargaining?

No. The only exemption under the law related to collective bargaining agreements applies to public employee positions.

Is there an exemption for headhunters?

No. The law does not include an exemption for headhunters. Headhunters who qualify as employers, employment agencies, or agents of an employer, or who aid and abet a violation of the NYC Human Rights Law, may be liable under the law.^[L]_[SEP] To protect against liability, headhunters should obtain written confirmation from job candidates that they consent to the disclosure of their salary history.^[L]_[SEP]

May an employer rely on a headhunter's representation that the applicant has consented to the disclosure of the applicant's salary history when engaging in negotiations on behalf of the applicant?

To protect against liability, prospective employers should obtain a copy of the applicant's written consent authorizing the headhunter to disclose that information before relying on a headhunter's representations about an applicant's salary history.

Is there an exemption for agents who work on behalf of applicants?

No. Agents may disclose salary history in negotiations with a prospective employer only if they have the consent of the prospective employee to do so. Agents may be liable for "aiding and abetting" an unlawful discriminatory practice if they disclose salary history about a prospective employee without the prospective employee's permission.

Can a prospective employer ask an applicant about the value of competing offers from other prospective employers or about counter offers from the applicant's current employer?

Yes, a prospective employer can ask an applicant about competing offers and counter offers that the applicant has received and the value of those offers. ^[L]_[SEP]

May an employer ask about salary history after an individual has been hired and the individual's compensation has been set?

Yes. The law governs the hiring context and does not address inquiries about salary history that are made after an individual has been hired and is currently employed with the employer making the inquiry.

How does the salary history law relate to the City of New York's Executive Order ("EO") 21, which prohibits the use of salary history for employment at City agencies?

The salary history protections under the NYC Human Rights Law are applicable to all public and private employers in New York City (but do not apply to public positions for which compensation is set pursuant to collective bargaining). City agencies are also governed by EO 21 and should continue to implement the provisions of EO 21 that do not conflict with and that are more protective of job applicants than the Law. For example, EO 21 prohibits agencies from relying on salary history even if it was voluntarily disclosed by the applicant. In addition, internal transfers and promotions are covered under EO 21, but not the Law. City agencies should also note that the definition of inquiry is slightly different under the Law and EO 21. In general, unavoidable conflicts between EO 21 and the Law should be resolved in favor of the Law.

Can an employer consider the salary history of a temporary employee or a subcontractor in determining compensation for an offer of permanent employment in the same position or a comparable position?

It depends. Based on the facts of each case, the Commission will consider whether the temporary employee or subcontractor qualifies as an applicant for a new position or for internal transfer or promotion. If the employer is a joint employer of the subcontractor or temp, the application may be one for internal transfer or promotion, which is not covered by the salary history law.

*Corporate Acquisitions***May a company seeking to acquire another company obtain salary information about the employees of the target company as part of the due diligence process?**

Yes. In the context of an acquisition, the employees of the target company are not "job applicants" for the purposes of the salary history law.

May a company seeking to acquire another company use salary information in setting the salary of the employees it will be absorbing from the target company?

It depends. In the context of an acquisition, acquiring companies may rely on salary history information when absorbing employees from the target company and making compensation and structural decisions on a non-individualized basis. However, if employees of the target company are being asked to interview for positions with the acquiring company, the salary history law may be implicated. In those circumstances, it is recommended that any salary information about employees from the target company that is disclosed during the acquisition due diligence process not be shared with hiring managers making decisions about compensation.

V. Best Practices**What best practices can employers implement to comply with the Law?**

- During the hiring process, focus questions on applicants' salary demands, skills, and qualifications.

- Ensure that job applications and other forms do not include questions about applicants' salary history, even if such questions are framed as "voluntary."
- Modify written policies and educate interviewers and hiring staff to prohibit inquiries about applicants' salary history.

What can job applicants do if they are asked about their salary history?

Job applicants can report violations of the salary history law to the Commission and may be able to recover damages. However, deciding what to do when faced with impermissible questions on a job application or in an interview can be difficult, and applicants may not always want to confront prospective employers or report violations of the law. If you are faced with an impermissible question about your salary history, here are some examples of helpful ways you might respond:

- In response to a question about what you currently make, you can reframe the issue in terms of your salary expectations or demands and not disclose your salary history.
- Indicate that you'd like to discuss your compensation based on the requirements and responsibilities of the job for which you're applying, which may differ from your prior work.
- Reframe the question to focus on the value you can bring to the job and what you can add to the company, rather than on what you made previously.