Coughlin Midlige & Garland LLP

Alert

New Jersey Enacts Employee Salary History Ban

By: Joshua L. Weiner
August 12, 2019

New Jersey has enacted a new law prohibiting employers from seeking or relying on job applicants' salary history.

Lieutenant Governor Sheila Oliver (acting on behalf of New Jersey Governor Phil Murphy) has signed legislation that prohibits employers from requesting or relying on a job applicant's salary history in hiring and pay-setting decisions. The law will take effect on January 1, 2020.

This legislation comes a year after New Jersey's passage of the New Jersey Equal Pay Act which precludes an employer from paying an employee of any protected class at a lower rate than other employees with similar job duties, unless the employer has a legitimate business reason for the differential. It also comes immediately on the heels of the recent staggered increase in the New Jersey minimum wage as well as legislation placing restrictions on the use of arbitration provisions in employment contracts and non-disclosure provisions in settlement agreements resolving claims of discrimination and retaliation.

New Jersey's new salary history ban bars employers from screening job candidates based on wage, salary, and benefits history or requiring a salary history to satisfy any minimum or maximum criteria. The law further proscribes an employer from requiring candidates to disclose past salaries. Under the new law, if the applicant *voluntarily* provides his or her salary history without prompting, employers may verify salary history and factor in the information into salary, benefits, and compensation decisions.

The law does not apply to internal transfers or promotions, an employer's use of knowledge acquired through the candidate's prior employment with the business, or when a federal law or regulation mandates the disclosure of a candidate's salary history.

Further, where the position involves incentive or commission plans, the New Jersey law authorizes an employer to inquire about an applicant's previous experience with incentive and commission plans, so long as the employer does not seek information on the applicant's previous earnings from those plans.

Additionally, an employer's attempt to obtain or verify an applicant's disclosure of non-salary-related information when conducting a background screening does not violate the law if the employer states in its request that salary history is not to be disclosed. If salary history is disclosed, employers may not retain the information or consider it when determining compensation for the applicant.

Employers who violate New Jersey's salary history ban face fines of up to $1,000, $5,000, and $10,000 for the first, second, and third violations. The law does not provide employees with a private right of action, meaning they are not permitted to sue an employer who violates the ban.

Employers should review and revise their hiring practices and policies to ensure compliance with the laws in the states in which they operate. Coughlin Midlige & Garland attorneys will continue to monitor pay equity and other developments as it pertains to employment and labor law. Please contact us with any questions about the potential implications of New Jersey's salary history ban or other legal developments.