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New Jersey Prohibits Employers From Asking Prospective Employees About Their Salary Histories

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To combat historical imbalances in pay of women and minorities, New Jersey recently passed a bill amending New Jerseys Law Against Discrimination (LAD) to prohibit employers from asking prospective employees about their current salaries.

Beginning in January, employers will no longer be able to screen job applicants based on their wage or salary history, or inquire about their historical salary, compensation and benefits. However, a prospective employee may still voluntarily provide salary information.

The bill also prohibits employers from disciplining or retaliating against employees for sharing their employment terms and conditions with others, including job title, occupational category, compensation, gender, race, ethnicity, military status or national origin. The LAD already prohibited employers from disciplining or retaliating against employees for requesting such information from other current or former employees, but now adds additional protections for coworkers who share the information. Employers face civil penalties of up to $10,000 for a first offense, $25,000 for a second offense, and $50,000 for all subsequent offenses. Employees may also sue an employer who violates the LAD for damages.

The bill formally goes into effect on January 25, 2020, but employers should be preparing to amend their recruitment processes now.

This bill comes in the wake of similar bills passed by Massachusetts, New York City and Philadelphia. Philadelphias ordinance prohibiting this conduct was challenged in federal court on constitutional grounds and upheld at the trial level. That decision is currently awaiting review by the Third Circuit Court of Appeals. In part, it is also consistent with recent decisions from the National Labor Relations Board upholding employees rights to discuss terms and conditions of their employment as part of the National Labor Relations Acts protections.

What does this mean for employers?

Employers should review their hiring and job screening practices to ensure that they are not asking prospective employees historical salary, compensation and benefits or using such information in screening and determining their salaries, unless the prospective employee voluntarily and without employer coercion authorizes the employer in writing that it may seek such information. Employers should not take adverse employment actions against employees who disclose or request the job title, occupational category, rate of compensation, gender, race, ethnicity, military status or national origin of other employees.

Practically, this law means employers will need to rely on measures other than a candidates salary history in setting compensation, including internal pay policies and market-based analysis.

If you have any questions about this new law or would like an attorney to review your employment manual for compliance, please feel free to contact Jeremy Cole, Adam Gersh or any other member of Flaster Greenberg's Labor & Employment Department.