



## Growing trend to prohibit salary history inquiries may create compliance concerns for employers

A growing number of jurisdictions across the U.S. are proposing and enacting legislation that restricts employers from asking applicants and employees about salary histories. Lawmakers are increasingly seeing the ban as a positive step towards closing the gender and racial wage gap.

By prohibiting employers from attempting to base a new employee's salary on what they were previously paid, lawmakers are hoping to relieve the pay disparities that have historically affected women and minorities from the onset of their careers.

These laws are very recent, with the first law of its kind enacted by Massachusetts in August 2016. Effective July 1, 2018, [Massachusetts Senate Bill 2119](#) will make it unlawful for an employer to “seek the wage or salary history of a prospective employee from the prospective employee or a current or former employer or to require that a prospective employee’s prior wage or salary history meet certain criteria; provided, however, that: (i) if a prospective employee has voluntarily disclosed such information, a prospective employer may confirm prior wages or salary or permit a prospective employee to confirm prior wages or salary; and (ii) a prospective employer may seek or confirm a prospective employee’s wage or salary history after an offer of employment with compensation has been negotiated and made to the prospective employee.”

Similarly, New York City’s Mayor Bill de Blasio signed [Executive Order 21](#) prohibiting City agencies from inquiring about the salary history of job applicants. The Executive Order, which

became effective on Dec. 4, 2016, dictates that prior to making a conditional offer of employment, City agencies cannot seek to obtain information regarding an applicant’s salary history either through direct questioning of an applicant or through searches of public records. The Order allows for City agencies to inquire about previous salary only after making a conditional offer of employment that includes the salary for the job, and solely for the purpose of evaluating an applicant’s representations about his or her prior employment.

New York City recently passed a [bill](#) that, if signed by the Mayor, will extend this ban to private employers. The City of Philadelphia also enacted a [Wage Equity Ordinance](#) recently that applies to private employers. Similar legislation is currently pending in the states of [New York](#) and [New Jersey](#), as well as in the [District of Columbia](#). On the federal level, Congresswoman Eleanor Holmes Norton, along with several cosponsors, introduced the “Pay Equity for All Act of 2016” ([H.R. 6030](#)) on Sept. 14, 2016. If passed, this federal law would prohibit employers in all 50 states from asking applicants for their salary history before making a job or salary offer.

If your organization currently asks applicants for salary history information, please ensure that you are compliant with the newly enacted salary history bans in the previously discussed jurisdictions. As a best practice, this would include removing the pre-offer salary history inquiry from applicant tracking systems (ATS) as well as from any forms used to collect applicant information such as paper or online employment applications. Please also keep in mind that asking for W-2 forms before the salary history question becomes lawful may be a problematic practice for employers in the aforementioned jurisdictions.