

# STATE OF NEW YORK

2040--B

2017-2018 Regular Sessions

## IN ASSEMBLY

January 17, 2017

Introduced by M. of A. CRESPO, GALEF, MORELLE, SEPULVEDA, ARROYO, GLICK, JAFFEE, HOOPER, SIMON, RIVERA, MONTESANO, JOYNER, LIFTON, HEVESI, ROSENTHAL, McDONOUGH, GOTTFRIED, M. G. MILLER, SEAWRIGHT, MOSLEY, STIRPE, TITONE, DINOWITZ, JEAN-PIERRE, HUNTER, GJONAJ, DE LA ROSA, BRONSON -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to prohibiting wage or salary history inquiries

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 194-a to  
2 read as follows:

3 § 194-a. Wage or salary history inquiries prohibited. 1. No employer  
4 shall:

5 a. rely on the wage or salary history of a prospective employee or  
6 current or former employee in determining the wages or salary for such  
7 individual.

8 b. orally or in writing seek, request, or require the wage or salary  
9 history from a prospective employee or current or former employee as a  
10 condition to be interviewed, or as a condition of continuing to be  
11 considered for an offer of employment, or as a condition of employment  
12 or promotion.

13 c. orally or in writing seek, request, or require the wage or salary  
14 history of a prospective employee or current or former employee from a  
15 current or former employer except as provided in subdivision 3 of this  
16 section.

17 d. refuse to interview, hire, promote, otherwise employ, or otherwise  
18 retaliate against a prospective employee or current or former employee  
19 based upon prior wage or salary history.

20 e. refuse to interview, hire, promote, otherwise employ, or otherwise  
21 retaliate against a prospective employee because the prospective employ-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 ee or current or former employee did not provide wage or salary history  
2 in accordance with this section.

3 f. refuse to interview, hire, promote, otherwise employ, or otherwise  
4 retaliate against a prospective employee or current or former employee  
5 because the prospective employee or current or former employee filed a  
6 complaint with the department alleging a violation of this section.

7 2. Nothing in this section shall prevent a prospective employee or  
8 current or former employee from voluntarily disclosing wage or salary  
9 history, including but not limited to for the purposes of negotiating  
10 wages or salary.

11 3. A prospective employer may confirm wage or salary history only if  
12 at the time an offer of employment with compensation is made, the  
13 prospective employee or current or former employee responds to the offer  
14 by providing prior wage information to support a wage higher than  
15 offered by the employer.

16 4. For the purposes of this section, "employer" shall include but not  
17 be limited to any person, corporation, limited liability company, asso-  
18 ciation, labor organization, or entity employing any individual in any  
19 occupation, industry, trade, business or service. For the purposes of  
20 this section, the term "employer" shall include the state, any political  
21 subdivision thereof, any public authority or any other governmental  
22 entity or instrumentality thereof, and any person, corporation, limited  
23 liability company, association or entity acting as an employment agent,  
24 recruiter, or otherwise connecting prospective employees and with  
25 employers.

26 5. (a) If the commissioner finds, after notice and an opportunity to  
27 be heard, that an employer has violated the provisions of this section,  
28 the commissioner may by an order which shall describe particularly the  
29 nature of the violation, assess a civil penalty of not more than one  
30 thousand dollars for the first such violation, not more than two thou-  
31 sand dollars for a second violation and not more than three thousand  
32 dollars for a third or subsequent violation. Such penalty shall be paid  
33 to the commissioner for deposit in the treasury of the state. In assess-  
34 ing the amount of the penalty, the commissioner shall give due consider-  
35 ation to the size of the employer's business, the good faith of the  
36 employer, the gravity of the violation, and the history of previous  
37 violations.

38 (b) A prospective employee or current or former employee aggrieved by  
39 a violation of this section may bring a civil action for compensation  
40 for any damages sustained as a result of such violation on behalf of  
41 such employee, other persons similarly situated, or both, in any court  
42 of competent jurisdiction. The court may award injunctive relief as well  
43 as reasonable attorneys' fees to a plaintiff who prevails in a civil  
44 action brought under this paragraph.

45 6. Prospective employees, or current or former employees, may seek  
46 enforcement of the provisions of this section, including pursuant to  
47 section one hundred ninety-eight of this article.

48 7. The department shall conduct a public awareness outreach campaign,  
49 which shall include making information available on its website, and  
50 otherwise informing employers of the provisions of this section.

51 § 2. This act shall take effect on the one hundred eightieth day after  
52 it shall have become a law.