

# STATE OF NEW YORK

5308--A

2019-2020 Regular Sessions

## IN ASSEMBLY

February 8, 2019

Introduced by M. of A. CRESPO -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, BRONSON, DAVILA, DE LA ROSA, DINOWITZ, ENGLEBRIGHT, EPSTEIN, GALEF, GARBARINO, GLICK, GOTTFRIED, HEVESI, HUNTER, JAFFEE, JEAN-PIERRE, JOYNER, KOLB, LENTOL, LIFTON, McDONOUGH, M. G. MILLER, MONTESANO, MOSLEY, NIOU, ORTIZ, OTIS, PEOPLES-STOKES, RAIA, RIVERA, L. ROSENTHAL, SEAWRIGHT, SIMON, STECK, STIRPE, TAYLOR, THIELE, TITUS, WALKER, WALLACE, WEPRIN, WILLIAMS, WOERNER -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, 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 in  
6 determining the wages or salary for such individual.

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

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

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

LBD03224-04-9

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

4 e. refuse to interview, hire, promote, otherwise employ, or otherwise  
5 retaliate against a prospective employee because the prospective employ-  
6 ee or current or former employee did not provide wage or salary history  
7 in accordance with this section.

8 f. refuse to interview, hire, promote, otherwise employ, or otherwise  
9 retaliate against a prospective employee or current or former employee  
10 because the prospective employee or current or former employee filed a  
11 complaint with the department alleging a violation of this section.

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

16 3. A prospective employer may confirm wage or salary history only if  
17 at the time an offer of employment with compensation is made, the  
18 prospective employee or current or former employee responds to the offer  
19 by providing prior wage information to support a wage higher than  
20 offered by the employer.

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

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

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

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

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

1 8. This section shall not apply to any actions taken by an employer,  
2 employment agency, or employee or agent thereof pursuant to any federal,  
3 state, or local law or regulation that specifically authorizes the  
4 disclosure or verification of salary history information for employment  
5 purposes, or specifically requires knowledge of salary history informa-  
6 tion to determine an employee's compensation.

7 9. The provisions of this section shall not be construed to preempt or  
8 supersede any local law, the provisions of which are no less stringent  
9 or restrictive than the provisions of this section.

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