

# STATE OF NEW YORK

3692

2019-2020 Regular Sessions

## IN SENATE

February 12, 2019

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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.

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

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

23 f. refuse to interview, hire, promote, otherwise employ, or otherwise  
24 retaliate against a prospective employee or current or former employee

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

LBD06440-01-9

1 because the prospective employee or current or former employee filed a  
2 complaint with the department alleging a violation of this section.

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

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

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

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

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

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

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

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