STATE OF NEW YORK

3692--A

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 -- 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:

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

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

a. rely on the wage or salary history of a prospective employee in determining the wages or salary for such individual.

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

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

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

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

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

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

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

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

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

5. (a) If the commissioner finds, after notice and an opportunity to be heard, that an employer has violated the provisions of this section, the commissioner may by an order which shall describe particularly the nature of the violation, assess a civil penalty of not more than one thousand dollars for the first such violation, not more than two thousand dollars for a second violation and not more than three thousand dollars for a third or subsequent violation. Such penalty shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, and the history of previous violations.

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

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

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

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

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

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