

# 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:

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.

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

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

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

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

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

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

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

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

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

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

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

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