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NEW JERSEY BANS EMPLOYERS FROM SCREENING JOB APPLICANTS BASED ON SALARY HISTORY

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On July 25, 2019, New Jersey Acting Governor Sheila Oliver [signed A1094 into law](#), which prohibits employers from screening job applicants based on salary history. New Jersey joins a growing number of states, such as California, Connecticut, and Massachusetts, who have enacted similar prohibitions on the use of wage history in the hiring process. The law takes effect on January 1, 2020. Below are a few key takeaways for New Jersey employers.

The law prohibits employers from:

- Screening job applicants because of the applicant’s salary history, including but not limited to wages, salaries, and benefits information.
- Requiring a job applicant’s salary history to meet a minimum or maximum criteria.

The law *does not* prohibit employers from:

- Considering a job applicant’s salary to determine the applicant’s compensation package *if* the applicant “voluntarily, without employer prompting or coercion, provides the employer with salary history.”
- After a job offer has been made that includes information on the compensation package, requesting the job applicant to provide a written authorization to confirm salary, compensation, and benefits.
- Considering the salary or wage history of *internal* job applicants (*i.e.*, transfers and promotions).
- Considering the salary or wage history of a job applicant who previously worked for the employer, where the employer already has knowledge of said history.
- Inquiring about a job applicant’s experience with incentive and commission plans if such plans are a component of the compensation package of the job opening to which the applicant applied. Employers may not ask the applicant about the applicant’s earnings with respect to his or her experience with incentive and commission plans.
- Taking action required by federal law with respect to verification or disclosure of a job applicant’s salary history.
- Conducting a background check of a job applicant, provided the employer specifies that salary information shall not be disclosed. If salary information is inadvertently disclosed as a result of the background check, the employer must destroy the information and is prohibited from using it when determining the salary, benefits, or other compensation for the applicant.



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Employers who violate the law face penalties of up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for any subsequent violation. The law also amends the New Jersey Law Against Discrimination (LAD) to make the screening of job applicants who are members of a protected category based on salary history an unlawful employment practice. If the applicant is a member of a protected category, the employer is subject to the penalties available under the LAD, with the exception of punitive damages.

Over the next few months, New Jersey employers should consider whether their current policies, procedures, practices, and forms comply with the law before it takes effect.

For Further Information

If you have any questions about this Alert, please contact [Ben Teris](#) or the attorneys in our [Labor and Employment Group](#) or the attorney in the firm with whom you are regularly in contact.