

Client Alert **Employment & Labor**

New Jersey and New York Further Strengthen Wage and Hour Laws to Protect Employees

Part 2 – NY Developments

On July 10, 2019, Governor Andrew Cuomo signed into law a ban on salary history inquiries by employers and potential employers in New York State, as well as an expanded New York State Equal Pay Act. Another recently enacted statute, signed into law on July 29, 2019, has expanded protections afforded employees who complain about wage theft, overtime pay, and minimum wages, among other New York Labor Law violations, or otherwise cooperate with state investigations concerning such claimed violations.

Salary History Inquiry Ban

Under the new law, which will become effective on January 6, 2020, employers in New York State may not inquire about a job applicant's wage or salary history from the applicant directly or from the applicant's former employer. They also may not rely upon that history in determining the applicant's compensation or in deciding whether to make the applicant a job offer or interview the applicant for a position. Further, New York employers may not require a current employee to disclose his or her salary history as a condition to being interviewed or as a condition for a promotion.

The statute creates a private right of action for applicants and employees, and an employer's violation of the ban on salary history inquiries (or the employer's retaliation against an applicant or employee) may result in a court holding the employer liable for damages, injunctive relief, and the employee's attorneys' fees. The new state law complements a New York City ordinance, which has prohibited NYC employers, since October 31, 2017, from asking about an applicant's salary history during the hiring process.

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Equal Pay Act Expansion

New York State's Equal Pay Act formerly only prohibited differentials in pay for *equal* work and which were due to an employee's sex. The amended statute, which will go into effect on October 8, 2019, prohibits unequal pay on the basis of *any* protected characteristic, not just sex, where employees perform equal or *substantially similar* work. By expanding the narrow "equal work" standard to include "substantially similar work," the amended statute will reduce the burden on employees who seek to prove violations of that act.

Accordingly, after its effective date, persons who are employed in New York State in the "same establishment" and perform either equal or substantially similar work cannot be paid differently, based on their sex, age, race, sexual orientation, or any other status that the New York State Human Rights Law protects from discrimination, without violating the State's Equal Pay Act. Employers who do so may face penalties from the NYS Department of Labor for such differential pay rates of up to \$500 for each violation, and could be sued for liquidated damages of up to 300% on unpaid wages where the violation is deemed to be "willful," plus attorneys' fees.

Enhanced Labor Law Retaliation Proscription

New York Labor Law Section 215 has long provided that an employer may not "discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee" because the worker complained about an asserted violation of the Labor Law (including wage theft, overtime pay, and minimum wage claims) or otherwise cooperated with a New York State Department of Labor or Attorney General investigation concerning a purported violation of the Labor Law.

Governor Cuomo has now signed legislation amending the Labor Law to provide that the language "threaten, penalize, or in any manner discriminate or retaliate against any employee" includes threatening to contact or contacting federal immigration agencies or otherwise reporting or threatening to report the citizenship or suspected immigration status of an employee or an employee's family member. This statutory expansion becomes effective on September 27, 2019 (90 days following the law's signing date).

Section 215 provides that a court may award aggrieved employees back pay, front pay, liquidated damages, and the employee's attorneys' fees. In addition, an individual who violates Section 215 can be charged criminally with a Class B misdemeanor, and imprisoned for up to three months upon conviction.

Take Aways

New York State-based employers should take appropriate measures now to assure that (i) human resources personnel and others involved in employee recruitment are mindful of the new salary history inquiries ban, which will take effect next January, (ii) differences

between salaries paid to employees who perform substantially similar work are not based upon any legally-protected characteristics, and (iii) managers and supervisors are trained on the new retaliation protections afforded employees who report alleged New York Labor Law violations, including those involving wage theft, overtime pay, and minimum wage claims.

Postscript

Part I of this Alert, which we published in August, addressed recent wage and hour statutory protections enacted in **New Jersey**. We will address in a future Alert New Jersey's own statute banning salary-history inquiries, which was signed into law on July 25, 2019 and takes effect on January 1, 2020.

Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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