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LARRY MARTINEZ: Legislation serves as an opportunity for employers to revisit how they conduct their hiring process.' || Photo by Bob Giglione

## Gender wage gap under attack

By: Adina Genn  May 2, 2017  0



New York City is seeking to ban employers from asking job candidates about salary history, part of a larger nationwide trend toward reducing the salary gap between men and women.

Massachusetts and Philadelphia already have these measures in place, but the law is not without controversy. Already, Philadelphia is postponing the ban after the city's Chamber of Commerce filed a federal lawsuit that claimed the law is unconstitutional.

"The law is a vestige of progressive political agendas and administration to remedy wage disparity," said Larry Martinez, a partner and co-chair of the labor and employment practice group at Meltzer, Lippe, Goldstein & Breitstone, a law firm in Mineola.

The law would prompt Long Island organizations with employees who work in the five boroughs to revise their hiring practices. The law would not immediately affect all Long Island firms, but experts note that the effort could be part of a trend that might gain momentum nationwide.

"It's part of a New York City human rights law," said Dawn Davidson Drantch, corporate counsel for Alcott HR, a professional employer organization, in Farmingdale. "If employees are working in New York City, they are covered by the New York City human rights law."

Long Island employers may have to brace eventually for a similar law. A bill in the New York State Senate would prohibit employers from seeking salary history from prospective employees.

"Women have historically gotten lower salaries than men – 80 cents on the dollar – so if asking about past salary, it's perpetuating that disparity," Davidson Drantch said.

"A female may not want to reveal her lower prior history," said Steven Mitchell Sack, an attorney with offices in East Meadow and Manhattan. "Her efforts may not have been appreciated, and that might not work in her favor when negotiating."

New York has the nation's smallest gender wage gap, 11 percent, according to a study by the U.S. Congress' Joint Economic Committee. Wyoming, meanwhile, has the highest at 36 percent.

And women of color meet the biggest challenge, earning as little as 54 cents on the dollar, compared to a man, according to the study.

Contributing factors include years of work experience, the tendency for women to work in occupations and industries that pay less and that they interrupt careers to care for their families. Discrimination still plays a role, with women finding work in less well-paid jobs, the study showed.

The disparity is such that women must work 50 years to earn what men make in 40, according to the National Women's Law Center.

"The gender wage gap leaves women in a deep, deep hole," Emily Martin, NWLC general counsel and vice president for workplace justice, said in a statement. "Either they lose hundreds of thousands of dollars over their lifetimes compared to men or they must work decades past retirement age to catch up."

The legislation can serve as an opportunity for employers to "revisit how they conduct their hiring process," Martinez said. That includes reviewing their employer applications, their interviewing process and their preset questions, he added.

"Whoever is doing the interviewing must be trained to ask legal questions only," Sack said. For example, it's illegal, he said, to ask an applicant's date of birth, or why the person is seeking employment at a particular age. Employers should not ask about an applicant's religion, credit problems, bankruptcies and wage garnishment. In addition, they should not ask a woman about marriage, plans for children or childcare while working, a spouse's health insurance and more.

Should the law take effect state- or city-wide, employers can also "revisit narrative scripts they give to supervisors" so that organizations don't address the question inadvertently, Martinez said.

New York is no stranger to laws that enhance civil rights for employees. For example, Davidson Drantch points to the "ban the box" legislation already enacted in New York City, Buffalo and Rochester that prohibits employers from asking job prospects if they have criminal records. "It's picked up momentum," she said.

Still, while the inclination may lean towards additional civil liberties, the law is not without challenges, especially given that the chamber of commerce in Philadelphia filed a motion to restrain its implementation, Martinez said. In addition, the trend towards progressive moves "may be going the other way" across the nation, under a less regulatory Trump administration.

And, he said, the law, which "on its face is a noble law" may be "over-encompassing of those who suffered no discrimination" and could be more narrowly tailored.



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In addition, the Equal Employment Opportunity Commission's plan under its EEO-1 form to begin collecting salary data from all employers with 100 or more workers would produce salary information for men versus women. Any disparity that surfaces would provide a tool to "address the issue in a focused way," Martinez said. "The employer can see if there is a disparity issue or the EEOC can follow up with an investigation. It's within their purview to issue follow-up requests." But even that plan is being met with some opposition.

Still, salary discussions can be carefully broached.

Sack suggested saying to a candidate, "Tell me about yourself," which could open dialog.

And Davidson Drantch pointed out that an employer could "still ask what someone is looking for."

And there's the possibility that some candidates may use their prior salary as a negotiating point.

"From the employees' standpoint, they should not volunteer that information unless they want to," Sack said.

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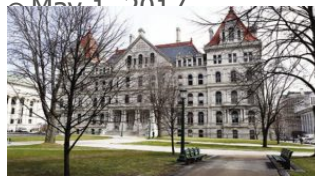
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