

## Top stories in this newsletter



EEOC Pay Data Reporting—Update



New York and New Jersey Salary Bans



Year in Review

## EEOC Pay Data Reporting—Update



The September issue of this newsletter reported the September 30 deadline for employers to submit EEO-1 Component 2 data for 2017 and 2018. That deadline did not change. The Equal Employment Opportunity Commission, however, has announced its intention to discontinue further collection of EEO-1 Component 2 data.

The Commission cited an undue burden on employers in its decision. In 2016, the Commission calculated that employers would spend \$53.5 million each year in 2017 and 2018 to provide Component 1 and Component 2 data, combined. Under a new methodology adopted by the Commission, the yearly cost to employers in compiling this data increased to \$614 million in 2017 and \$622 million in 2018. The Commission concluded that the beneficial uses of Component 2 data could not justify the financial burden on employers.

This new burden calculation did not change the Commission's position on collection of Component 1 data. As the Commission stated, Component 1 data "serves as a valuable resource for [the Commission's] analysis of industries and regions as well as for investigators in assessing allegations of discrimination" and "the continued collection of Component 1" data "is necessary for the proper performance of the agency's functions and fulfillment of the agency's mission."

This may not be the final word on collection of Component 2 data. The Court's may intervene to compel the Commission to continue to collect this data in the future.

For the text of the Commission's announcement visit: <https://www.eeoc.gov/eeoc/newsroom/wysk/eeo-1-notice.cfm>.

---

## New York and New Jersey Salary Bans



New York State was one of the first states to pass legislation promoting pay equity. The effort began in 2015 when the State passed a pay equity law more extensive than federal law.

New York's pay equity effort continued in January 2017 when Governor Andrew Cuomo signed an Executive Order requiring all New York State entities to adopt salary history blind hiring practices. Finally, this past summer, the New York legislature expanded protections against wage discrimination and imposed a salary history ban on New York employers.

Preventing wage discrimination is the primary goal of the salary history ban. The new law prohibits New York employers from requesting wage or salary history as a requirement for a job interview, job application, job offer or promotion. While New York's ban is part of a wave of similar legislation sweeping the country, the state's version applies more broadly than its counterparts by including not only potential employees but also existing employees seeking new positions within a company and even job promotions.

The law also prohibits employers from retaliating against a current or potential employee who refuses or otherwise fails to provide wage or salary information. Employers are also prohibited from retaliating against an employee or potential employee who files a complaint with the Department of Labor alleging one or more violations of the salary history ban.

Importantly, the law does not prohibit an employer from confirming wage or salary information after an offer of compensation is made and an employee responds to the offer by providing prior wages or salary information to support a negotiation for a higher wage or salary.

Employees who allege a violation under the law can bring a private right of action against the employer seeking damages. The court may also award injunctive relief as well as attorneys' fees to the prevailing party.

The New York salary history ban takes effect January 6, 2020.

For text of the law visit: <https://www.nysenate.gov/legislation/bills/2019/s6549>.

In New Jersey, former Governor Chris Christie vetoed a salary history ban in July of 2017. Under a Democratic Governor, and similar to New York, the salary history ban began in New Jersey with an Executive Order applicable to state governmental entities. The Executive Order was signed in January 2018. The New Jersey legislature subsequently passed a statewide ban and Governor Murphy signed it into law in July of this year.

The New Jersey salary ban prohibits an employer from screening job applicants based on salary history, including but not limited to wages, salaries or benefits. Similarly, the ban prohibits employers from requiring an applicant's salary history satisfy any minimum or maximum hiring criteria or using an applicant's salary to determine salary amount at any point during the hiring process. Finally, the new law prohibits an employer from considering an applicant's refusal to volunteer salary history in any employment decisions.

The New Jersey law contains exceptions that do not exist in New York. For instance, an employer can consider an applicant's salary history in determining compensation if an applicant voluntarily provides the employer with salary history and an employer may verify voluntarily provided salary history.

After an offer of employment that includes an explanation of compensation, a New Jersey employer is permitted to request that an applicant provide written authorization to confirm previous salary history. Additionally, employers are allowed to acquire salary history information that is publicly available, but can only use that information when determining salary, benefits or other compensation if the applicant has also voluntarily provided the information without employer prompting or coercion.

Also, unlike New York, the New Jersey ban does not apply to internal transfers or promotion or an employer's use of previous knowledge acquired as a result of an applicant's prior employment with the same employer.

Employer penalties are specifically set forth in the New Jersey legislation. An employer who violates the ban would be liable for a civil penalty not to exceed \$1,000 for the first violation, \$5,000 for the second violation and \$10,000 for each subsequent violation. Neither attorney's fees nor punitive damages are available.

The New Jersey salary history ban takes effect January 26, 2020.

For text of the New Jersey salary history ban visit: [https://www.njleg.state.nj.us/2018/Bills/A1500/1094\\_11.HTM](https://www.njleg.state.nj.us/2018/Bills/A1500/1094_11.HTM).

---

## Year in Review

As 2019 comes to a close, take time to reflect upon the many changes in the employment and human resources landscape this year. It has been a year in which employee rights took center stage. The resulting protections increased the compliance burden on employers. Use the fresh start of a new year to review policies and procedures and identify any areas of non-compliance. Enter the new year with a strategy for achieving compliance and avoiding future violations and penalties.

---

Lauren Murray Law Offices, LLC  
www.laurenmurraylaw.com  
1 International Blvd, Suite 400, Mahwah, NJ  
07495  
(845) 304-2685  
Next edition: January 2020

