New Jersey Governor Signs Executive Order Banning State Agencies From Inquiring Into Job Applicant's Salary History

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What Employers Need to Know:

In his first official act as New Jersey governor, Phil Murphy signed Executive Order #1, which the Governor believes will combat gender inequality and promote equal pay for women in New Jersey. In the Executive Order, the Governor cited to studies that showed that in New Jersey, women working full-time earn, on average, 82 cents for every dollar earned by men in full-time positions. That disparity grows to 58 cents for Black women and to 43 cents for Latinas.

To accomplish this lofty goal, the Executive Order prohibits employers from inquiring into a job applicant's salary history. However, because it has not gone through the legislative process, the Executive Order's only applies to "State entities."

The Executive Order is scheduled to take effect on February 1, 2018.

What's New?

Executive Order #1 prohibits state entities from inquiring into a job applicant's current or previous salaries, until the entity has made a conditional offer of employment and compensation package. It further prevents the employer from searching public records databases to ascertain an applicant's salary history. However, nothing in the Order prevents job applicants from volunteering previous compensation information, at which point, public entities may verify this information.

The Executive Order's authority is limited to "State entities." Therefore, it does not affect private employers or local governmental entities. Instead, the Executive Order only applies to the Executive Branch and the Executive Branch's agencies, authorities, boards, bureaus, commissions, divisions, institutions, offices, or any independent State authority, commission, instrumentality, or agency over which the Governor exercises executive authority.

Importantly, employees cannot file a lawsuit for violations of the Executive Order. Instead, the only remedy is to report the violation to the Governor's Office of Employee Relations.

What Actions do Employers Need to Take?

State Entities: State entities should update their polices to ensure consistency with the Executive Order's requirements. In addition, these entities immediately should provide training to their managers to prevent any violations.

Private employers & local governmental bodies: In June 2017, the Legislature passed A3480, which would have prohibited all employers in the State from requesting salary history information from prospective employees. To enforce violations, the bill allowed individuals the right to sue under the New Jersey Law Against Discrimination. This bill was vetoed by Governor Christie on July 31, 2017. In signing Executive Order #1, Governor Murphy declared that he "would make it state

law" if the Legislature passed a similar bill. The Legislature remains Democratic-controlled. Therefore, all employers should begin preparing for likely changes to the law that would prohibit any inquiries into prospective employees' salary history.