New Jersey Employers May Not Inquire About Salary History

August 19, 2019

By: Thomas Reilly

***Employment Law Monthly* – August 2019**

Authored by: **Thomas J. Reilly**

On July 25, 2019, Acting Governor Sheila Oliver signed Assembly Bill 1094 into law. This new legislation prohibits any employer from asking for a prospective employee's wage, salary, or benefit history and is part of the State's continuing effort to close the gender wage gap. Previously, employers could inquire about an applicant's salary history. Now, any employer who asks or otherwise attempts to obtain an applicant's salary history will be subject to a civil penalty of up to $1,000 for a first offense, $5,000 for a second offense, and $10,000 for any subsequent violations.

Although the new law prevents employers from asking for prior compensation history, it does not prevent job applicants from voluntarily—meaning "without employer coercion"—providing their prospective employers with written authorization to inquire about the applicant's salary history. Even so, employers are prohibited from "screen[ing]" a job applicant based on the applicant's compensation history, cannot require that a job applicant's previous compensation "satisfy any minimum or maximum criteria," and cannot at any stage in the hiring process rely on the applicant's compensation history in determining the applicant's salary. The State is likely to expand on the meaning of some of these provisions and terms through future regulations and administrative guidance.

For now, the immediate takeaway is clear: employers can no longer inquire about a job candidate's compensation history. This is not just limited to salary or wages, but also includes benefits and commission. And even when prospective employees voluntarily disclose such information, employers are prohibited from using that information as part of the hiring process, including in determining how much to pay a prospective applicant the employer plans to hire. Employers immediately should review their hiring practices, including review of any standard questionnaires or job applications to remove any inquiry relative to prior compensation or benefits. Employers also should immediately train any employees engaged in the interviewing or hiring process to ensure universal awareness of this new prohibition.