



April 2018

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Another State Moves to Ban Salary History Inquiries by Prospective Employers

By The Pay Equity Practice Group

The focus on the pay gap continues, this time in the New York State legislature. On the heels of the Ninth Circuit's decision in *Rizo v. Yovino* [[read here](#)] regarding the use of prior pay to explain pay discrepancies under the Equal Pay Act, New York Governor Andrew Cuomo last week introduced a bill that would amend the New York Human Rights Law ("NYHRL") to make it unlawful for an employer or employment agency to "rely on, or inquire about, the salary history information" of an applicant when determining whether to hire the applicant or what amount of compensation to offer. This proposed legislation [[read here](#)] is similar to New York City's Salary History Ban [[read here](#)], which went into effect on October 31, 2017.

Neither the New York City law nor the proposed state law preclude an employer's use of such information if an applicant voluntarily, *and without prompting*, discloses his or her salary history information. Further, both the proposed state law and the city law permit discussions with an applicant about his or her *expectations* with respect to salary, benefits, and other compensation, so long as the employer specifically refrains from inquiring about the applicant's salary history. Still, as the Ninth Circuit's decision in *Rizo* suggests, using prior pay to set compensation may still pose legal risks if later gender pay discrepancies are not explained by other variables.

We cannot predict whether this proposed legislation will pass in its current form, but based on the trends from the legislatures and in the courts we expect that some version of the bill will become law in New York. As New York, as well as other states and municipalities around the country consider and adopt similar laws, there will be an ever-expanding patchwork of legal challenges for national employers. We plan to monitor the bill and issue further guidance on the potential law as it becomes available.

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