



HOSPITALITY HUMAN RESOURCE CENTER

WHITE
PAPER

DELAWARE BANS SALARY HISTORY INQUIRIES

Synopsis

Governor John Carney signed House Bill 1 into law on June 14th, 2017, amending the Delaware Discrimination in Employment Act making it illegal for an employer to seek information regarding pay history from “a prospective employee applying for work. **The bill will take effect December 14th 2017.**

This act aims to equalize the gender pay gap by reducing the effects of perpetuating existing pay disparities. It prohibits an employer or employer’s agent from requesting an applicant’s compensation history.

Practices

- Employers may not “seek the compensation history of an applicant or a current or former employer.” This includes inquiries into past wages, health insurance and other employer provided benefits, and paid time off.
- Additionally, employers may not screen applicants based on compensation, including by requiring that an applicant’s prior compensation satisfy minimum or maximum criteria.
- If an employer’s agent has been explicitly informed by the employer of these prohibitions, but nonetheless violates the law, then the agent, not the employer will be liable for any action taken by the agent.
- Although it is illegal for an employer to request or demand the applicant’s compensation history, discussing and negotiating compensation expectations is permitted.
- An employer or employer’s agent may seek compensation history, only after an offer of compensation has been extended and accepted by the employee, for the singular purpose of verifying the applicant’s compensation history.

The Department of Labor’s website has information pertaining to the above stated practices, and will publicize to employers accordingly. The Department of Labor enforces the Delaware Discrimination in Employment Act.

Penalties

“Any employer or employer’s agent who violates or fails to comply with any requirement of this section shall be deemed in violation of this section will be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for the first offense and not less than \$5,000 nor more than \$10,000 for each subsequent violation.”

Multiple violations associated with one applicant will be treated as one offense.

Summary

Delaware restaurant employers, employers’ agents, managers, operators, etc. who oversee applications and conduct interviews should be aware of the pay history amendments to the Delaware Discrimination in Employment Act effective, December 14th 2017, and should make changes in the interview or recruitment process accordingly. Changes may include, but are not limited to: eliminating questions seeking information regarding any historic or current compensation from an applicant, and training interviewers regarding this change in the law.

FOR MORE INFORMATION ON THESE TOPICS

- **Delaware General Assembly**
AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNLAWFUL EMPLOYMENT PRACTICES.
<https://legis.delaware.gov/BillDetail/25664>
- **DE Department of Labor**
<https://dol.delaware.gov/>

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