

Fact Sheet:

New York 2017 Equal Pay Measures: Why We Need a Law Prohibiting Employers from Asking About Salary History

Employers often ask prospective employees to provide prior salary histories in order to set salary pay rates. This practice persistently discriminates against women who historically earn lower salaries than men throughout their careers. Pending New York State legislation ([A2040C/S6737A](#)) would prevent employers from inquiring about a job applicant's salary history. This bill would build on the passage of the [New York Women's Equality Act](#), groundbreaking [New York Paid Family Leave Law](#), a similar law passed in New York City, and a similar [Executive Order](#) signed by Governor Cuomo in January 2017, and will help further ensure that all workers in New York earn the wages they deserve. This fact sheet highlights why these new measures are integral to women's economic equality.

The Wage Gap Persists in 2017, Particularly for Women of Color

In the United States, women working full-time only make 79 cents for every dollar earned by men.¹ In New York State, while the gap is narrower, women working full-time still only make 89 cents for every dollar a man earns.² The gap for women of color remains much wider. Black women in New York earn just 66 cents for every dollar a white man earns, and Latina women earn an astonishing 56 percent of what white men in New York earn.³

- In New York State, women in the workplace collectively lose nearly \$54 billion a year due to unequal pay.⁴
- Women employed by the New York State government only make 83 cents for every dollar earned by men.⁵
- Wage disparity takes a significant economic toll on women, especially those living in poverty and those who are the primary supporters of their families.

¹ Carmen DeNavas-Walt & Bernadette D. Proctor, U.S. Census Bureau, *Income and Poverty in the United States: 2014: Current Population Reports* 10 (2015),

<https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>.

² National Partnership for Women and Families, *New York Women and the Wage Gap* 1 (2017), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2017-ny-wage-gap.pdf> [hereinafter *New York Women and the Wage Gap*].

³ *Id.*

⁴ *Id.*

⁵ Letitia James, N.Y.C. Public Advocate's Office, *Policy Report: Advancing Pay Equity in New York City* 8 (2016), http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/opa_pay_equity_report_final.pdf.

- Women head over 1 million households in New York, with nearly 300,000 of those households surviving on incomes that fall below the poverty level. If the wage gap of nearly \$5,916 per year were eliminated in New York, women could use those funds to pay for approximately five months of rent, or three months of mortgage payments, or close to a year's supply of groceries for their families.⁶
- Experts warn that unless a concerted effort is made to close the gender wage gap, it could take until the year 2059 to achieve pay equity.⁷

Disclosing Salary History to Employers Contributes to Wage Inequality

Women, especially women of color, begin earning less at the very outset of their careers. Therefore, when an employer asks about salary history, women are immediately at a disadvantage when it comes to negotiating and setting salary rates. The practice of asking about salary history thus perpetuates and reinforces wage inequality.

- Nationally, female college graduates earn an average of \$4 less per hour than their male counterparts in their first jobs after college, with women's starting salaries averaging \$16.58 and men's salaries averaging \$20.94.⁸
- Asking about salary history especially disadvantages those women that have left the job market to take on family responsibilities.⁹ This effectively penalizes those caregivers that take time to raise children and once again puts economic and family responsibilities at odds with one another.

The Proposed New York State Salary History Ban Would Help Close the Gender Wage Gap.

In August 2016, Massachusetts became the first state to pass a law banning employers from asking prospective employees about salary history.¹⁰ Since then, Oregon, Delaware, New York City, Philadelphia, and Puerto Rico have passed similar laws.¹¹ This proposed legislation would also build upon the [Executive Order](#) Governor Cuomo signed in

⁶ *New York Women and the Wage Gap*, *supra* note 2, at 1–2.

⁷ Institute for Women's Policy Research, *Women's Median Earnings as a Percent of Men's Median Earnings, 1960–2014 (Full-time, Year-round Workers) with Projection for Pay Equity in 2059*, at 1 (2015), <http://www.iwpr.org/publications/pubs/equal-pay-projection-2059>.

⁸ Teresa Kroeger & Katie Gould, *Straight out of college, women make \$4 less per hour than men—and the gap is getting wider*, Economic Policy Institute, Apr. 26, 2016, <http://www.epi.org/publication/straight-out-of-college-women-make-4-less-per-hour-than-men-and-the-gap-is-getting-wider/>.

⁹ James, *supra* note 2, at 4.

¹⁰ S. 2119, 189th Gen. Ct., Reg. Sess. (Mass. 2016), <https://malegislature.gov/Bills/189/Senate/S2119>.

¹¹ See H.B. 2005, 79th Leg. Assembly (Or. 2017), HS 1, 149th Gen. Assembly (Del. 2017), 2017 P.R. Act 16; N.Y.C. Int. 1253-2016; Phila., Pa. Code Tit. IX, § 9-1131 (2017).

January 2017 requiring all New York State entities to adopt salary history blind hiring practices.

The New York State bill would:

1. Prevent employers from relying on wage or salary history when determining the salary of a prospective employee.¹²
2. Prohibit employers from seeking, requesting, or requiring a job applicant's or current or former employee's wage or salary history as part of the interview process, or as a prerequisite for hiring.¹³
3. Prohibit employers from asking a job applicant's or current or former employee's current or former employer to provide an applicant's wage or salary history. However, if an employer makes an offer of employment and an applicant or current or former employee responds to the offer by providing salary history information that includes a wage higher than that proposed by the employer, the employer can then confirm the disclosed salary.¹⁴
4. Make it illegal for employers to refuse to hire or retaliate against an applicant or current or former employee for not providing salary history information or filing a complaint alleging a violation of the law.

Banning the Salary History Inquiry As Part of the Hiring Process Will Benefit Businesses.

Many employers already acknowledge an applicant's salary should be based on their relevant experience and the value they bring to the job they are being hired to do, not their past salary.

- The Greater Boston Chamber of Commerce, whose members include both large corporations and small businesses, publicly supported similar legislation that passed in Massachusetts in August 2016.¹⁵ Some of the Chamber's prominent members include Bank of America, Bloomberg, Citibank, Ernst & Young, Johnson & Johnson, and Verizon.

¹² See A2040C, 2017 Leg., Reg. Sess. (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/a2040c>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Michael Alison Chandler, *More state, city lawmakers say salary history requirements should be banned*, The Washington Post, Nov. 14, 2016, https://www.washingtonpost.com/local/social-issues/more-state-city-lawmakers-say-salary-history-requirements-should-be-bannedadvocates-for-women-argue-that-the-practice-contributes-to-the-nations-pay-gap/2016/11/14/26cb4366-90be-11e6-9c52-0b10449e33c4_story.html?utm_term=.5f2fd84bb830.



- Here in New York, Kickstarter, a leading technology company, and many other companies, support the passage of this legislation.¹⁶ Employment agencies, such as Long Island Temps, also endorse banning the salary history question as it will lead to “better performance and increased productivity” by employees.¹⁷
- In addition to this practice helping businesses recruit the best talent, it will also help avoid costly pay discrimination litigation based on employers relying on salary history to set wages.¹⁸ A mix of recent court decisions on the issue leave employers exposed to liability—a clear legislative standard will provide the clarity and certainly employers need to run their business.

The passage of this crucial legislation would not only help further wage equality in New York State but also set an important precedent for other states across the country.

For more information contact A Better Balance at 212-430-5982 or www.abetterbalance.org or visit PowHer at www.powherny.org.

¹⁶ A Better Balance (@ABetterBalance), Twitter (Apr. 4, 2016), <https://twitter.com/ABetterBalance/status/849249385015910400>.

¹⁷ Long Island Temps, *Salary History Ban: Don't Ask, Don't Ask*, Staffing Industry Insight (2017).

¹⁸ *See, e.g. Beck v. Boeing* (W.D. Wash. 2000) (\$72.5 million dollar settlement awarded in class action suit alleging pay discrimination based on Boeing's setting salaries of new hires solely based on past salary plus hiring bonus leading to stark disparities in pay based on gender).