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STAFFING PRACTICE GROUP

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New York City Ban on Disclosure of Salary History Expected to Take Effect in October 2017

The New York City Council has overwhelmingly passed a bill that would make it unlawful for an employer to inquire about or rely on an applicant's compensation history on an application or at any time during the hiring process. The bill is expected to be signed by the Mayor and the law is expected to take effect sometime in October of this year.

Staffing companies doing business in New York City and/or making placements within the City need to be aware of the new law's requirements and should be prepared to comply before the end of the year. Further, while the bill itself is silent as to whether the law applies to New York City employers hiring for positions located outside the City, the New York City Human Rights Commission will likely issue regulatory guidance on this issue before October.

Specifically, the bill amends the New York City Human Rights Law and makes it an unlawful discriminatory practice for a New York City employer to:

- (1) "inquire" about the salary history of an applicant for employment; and/or
- (2) rely on the salary history of an applicant to determine the salary, benefits or other compensation of that applicant, during the hiring process, unless the applicant voluntarily and without prompting discloses his/her salary history to the employer.

The new law specifically defines the term "inquire" to mean "to communicate any question or statement to an applicant, an applicant's current or prior employer, in writing or otherwise, to obtain an applicant's salary history." In addition, "inquire" also means



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...“to search publicly available records or reports to obtain an applicant’s salary history”, which employers will now be restricted from doing as well. This means that current background check processes must be evaluated and updated in the near future to ensure compliance.

The new law, of course, breaks new ground but employers will still be allowed to discuss with applicants their expectations regarding salary, benefits, and other types of compensation, just as employers will also be permitted to disclose to applicants any information about the employer’s proposed or anticipated salary or salary range. In particular, the new law will contain the following exclusions:

- (1) actions taken by an employer that are specifically authorized by law to disclose or verify salary history for employment purposes;
- (2) applicants for internal transfer or promotion with their current employer;
- (3) attempts by employers to verify an applicant’s disclosure of non-salary related information and/ or otherwise done through a background check; or
- (4) public employee positions for which salary, benefits or other compensation are determined by collective bargaining.

Staffing company employers should be proactive in their approach to compliance and consider the following steps to ensure compliance with this new law:

- (1) Update MSAs and client/vendor agreements to confirm that clients acknowledge and will comply with the new law and include indemnity provisions to protect against potential client violations of the law;
- (2) Update on-boarding materials to remove salary history questions;
- (3) Update background check procedures and other verification inquiries to ensure compliance;
- (4) Train recruiters and other employees that interact with applicants to refrain from inquiring an applicant's compensation history; and
- (5) Establish procedures for instances when an applicant voluntarily discloses salary history to ensure that the voluntary nature of the disclosure is documented.

As always, the Becker LLC Staffing Group is ready to assist you with all of your needs in this regard and with all other aspects of your staffing business.