

# NYC Employers Beware: Salary History Inquiry Ban To Take Effect This Fall

CITY OF NEW YORK

On May 4, 2017, New York City Mayor Bill de Blasio signed into law Introduction Number 1253-A, which will prohibit employers from inquiring about a prospective employee's salary history during all stages of the hiring process. The new law takes effect on October 31, 2017.

## The new law

### What does this mean for NYC employers?

Int. 1253-A prohibits an employer, employment agency, employee or agent from:

- Inquiring<sup>1</sup> about the salary history of a job applicant; and/or
- Relying on the salary history<sup>2</sup> of a job applicant when determining his or her salary amount at any stage in the employment process, including when negotiating a contract.

### What are the consequences of violating Int. 1253-A?

Individuals can file a complaint with the NYC Commission on Human Rights, which may impose a civil penalty of up to \$125,000 for an unintentional violation and up to \$250,000 for a willful and malicious violation of the law.

In addition, an individual may bring a civil lawsuit for violations of the law. The full range of relief available under the New York City Human Rights Law will be available in such a lawsuit, including backpay, compensatory damages, and attorneys' fees.

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<sup>1</sup> Int. 1253-A broadly defines what constitutes an "inquiry," stating that: "to inquire means to communicate any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history."

<sup>2</sup> Int. 1253-A defines "salary history" as encompassing all forms of employee compensation, including current and past wages, benefits and other compensation. However, it does not include objective measures of an applicant's productivity, such as revenue, sales or other production reports.



## Caveats and Exceptions

There are some additional qualifying exceptions to Int. 1253-A that employers should be aware of:

- If the applicant makes an *unprompted and willing disclosure* of his or her salary history to a prospective employer, the employer is permitted to consider salary history in determining the prospective employee's salary, benefits, and other compensation, and to verify the job applicant's salary history.
- Without inquiring about salary history, an employer is permitted to discuss with the applicant (i) salary, benefits and other compensation expectations; and (ii) any unvested equity or deferred compensation the applicant would forfeit or have cancelled by resigning his or her current employment.<sup>3</sup>
- The law *does not apply* to (i) New York City employers acting pursuant to any federal, state or local law authorizing the disclosure or verification of salary history, or requiring knowledge of salary history for employment purposes; (ii) current employees applying for an internal promotion or transfer; and (iii) public employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established in collective bargaining.

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<sup>3</sup> Should such employer's attempt to verify such non-salary-related information or to otherwise conduct a background check result in disclosure of the applicant's salary history, the employer is prohibited from relying on the salary information during the hiring process (including contract negotiations) when setting the salary, benefits or other compensation of the applicant.



### Next steps for NYC employers

Employers should review their policies and hiring practices to be certain that questions regarding salary history are eliminated and that written policies fully conform to the expectations of the new law. Human resources personnel, recruiters, and anyone else involved in the recruiting, interviewing, or hiring process should be trained in complying with the requirements of the new law and counseled on how to avoid claims that salary history was either involuntarily disclosed or disclosed at the prompting of the interviewer.

### How we can help

To help NYC employers comply with Int. 1253-A, in addition to offering hourly rate counseling services, Dentons offers a **flat-fee, turn-key solution**, tailored to your specific needs, and featuring a number of products and services, including:

- A memorandum explaining the new law and its legislative history, and laying out an effective compliance strategy.
- Training of interviewers and the distribution of handouts covering best practices, common mistakes and sample questions.
- The preparation of forms to protect your company against claims under the new law.



# Why Dentons?

Dentons' **Employment and Labor** practice understands how important attracting, retaining and managing employees is to achieving your business goals. Dentons has the world's largest global employment team, with over 425 lawyers in more than 45 countries and 100 locations. Our US team of over 80 employment and labor practitioners includes a 15-lawyer NYC group led by global practice leader Brian Cousin that is one of the largest employment practices in the city.

Dentons provides creative, yet always practical, counsel to ensure that your recruiting, screening and hiring practices are both effective and fully compliant with all applicable laws and regulations, including the various federal, state and local anti-discrimination, background checking, and recordkeeping laws that apply at every stage of the process.

Dentons' Employment and Labor team has extensive experience representing employers in all industry sectors, including financial

services, health care, education, mining, natural resources, energy, manufacturing, professional services, retail, real estate, hospitality, transport and infrastructure, technology, telecommunications, and insurance.

We routinely advise clients on:

- Ensuring that their job advertisements are free of discriminatory bias or preference.
- Creating job descriptions for open positions that accurately represent essential functions and qualifications.
- Posting required employment and labor law notices.
- Refraining from asking discriminatory or otherwise improper questions during job interviews.
- Ensuring that pre-employment tests do not adversely impact individuals or classes of individuals who possess protected characteristics.
- Properly classifying new hires as employees or independent contractors and exempt or non-exempt from overtime.
- Providing proper notices regarding background checks and drug testing, where applicable.
- Verifying employment eligibility under the federal I-9 process.
- Best practices regarding retention of resumes, correspondence, and applications.
- Dentons' Public Policy team leverages an extensive network of relationships with government and business decision-makers in New York City to promote employer interests. We partner with clients across a wide range of areas, including direct legislative and regulatory advocacy, policy issues monitoring, and government investigations and inquiries.

# Our awards and accolades

Dentons' Employment and Labor lawyers are recognized by both clients and peers as being on the cutting edge of this area of law. Many members of the team are regular fixtures in the leading guides to the legal profession including: *Chambers USA*, *Legal 500*, *Best Lawyers in America* and *Super Lawyers*.

In addition:

- In the 2017 *BTI Litigation Outlook*, Dentons was honored to be just one of four firms named a "Litigation Powerhouse" in seven litigation categories, including both Everyday Employment Litigation and Complex Employment Litigation.
- *Legal 500* (2017) ranked Dentons for its defense of labor and employment disputes, including collective actions.

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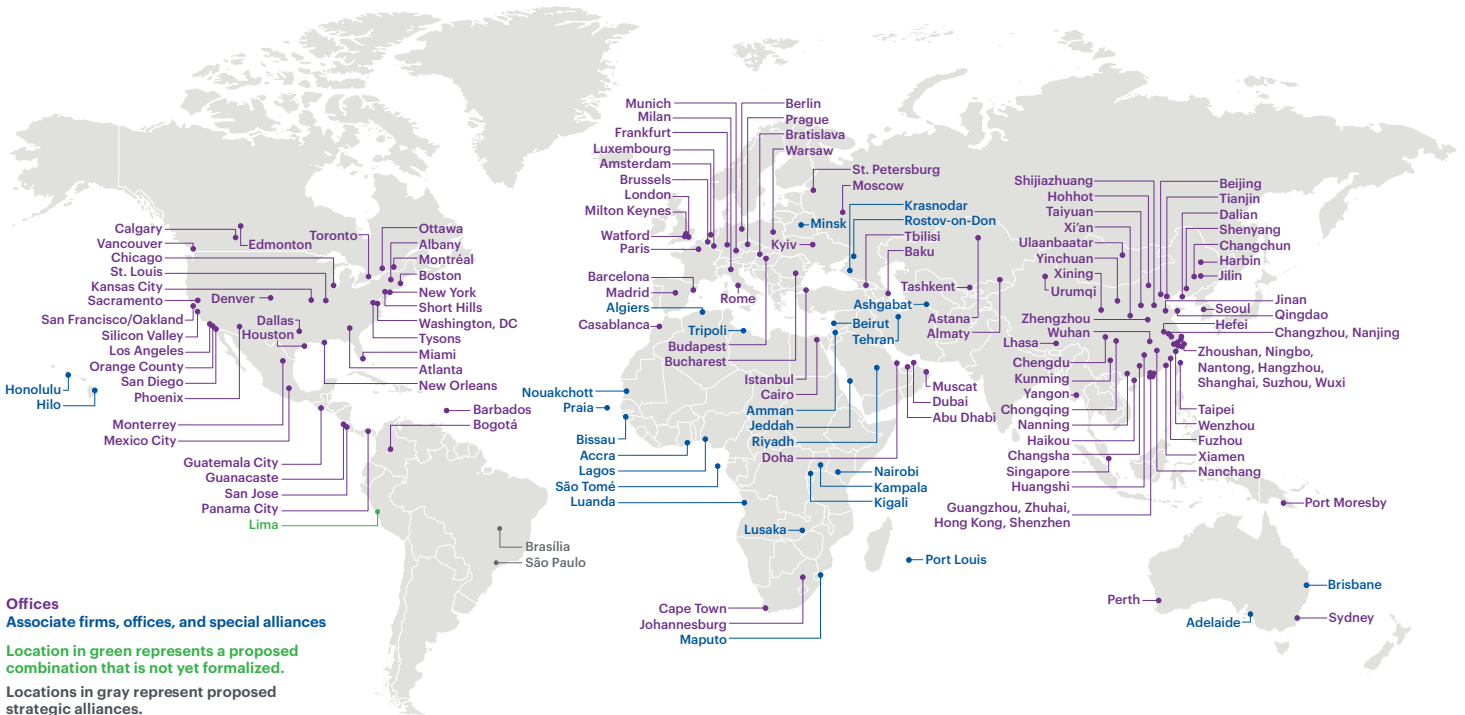


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# Our locations



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