

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1094**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

ADOPTED FEBRUARY 14, 2019

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**SYNOPSIS**

Prohibits employer inquiries about worker's wage and salary experience.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Labor Committee.

(Sponsorship Updated As Of: 6/21/2019)

1 **AN ACT** concerning employer inquiries regarding salary history and  
2 amending and supplementing various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. (New section) a. Except as otherwise provided in this  
8 section, it shall be an unlawful employment practice for any  
9 employer:

10 (1) to screen a job applicant based on the applicant's salary  
11 history, including, but not limited to, the applicant's prior wages,  
12 salaries or benefits; or

13 (2) to require that the applicant's salary history satisfy any  
14 minimum or maximum criteria.

15 b. Notwithstanding the provisions of subsection a. of this  
16 section, an employer may:

17 (1) consider salary history in determining salary, benefits, and  
18 other compensation for the applicant, and may verify the applicant's  
19 salary history, if an applicant voluntarily, without employer  
20 prompting or coercion, provides the employer with salary history.  
21 An applicant's refusal to volunteer compensation information shall  
22 not be considered in any employment decisions; and

23 (2) request that an applicant provide the employer with a written  
24 authorization to confirm salary history, including, but not limited  
25 to, the applicant's compensation and benefits, after an offer of  
26 employment that includes an explanation of the overall  
27 compensation package has been made to the applicant.

28 c. This section shall not apply to:

29 (1) applications for internal transfer or promotion with an  
30 employee's current employer, or use by the employer of previous  
31 knowledge obtained as a consequence of prior employment with the  
32 employer;

33 (2) any actions taken by an employer pursuant to any federal  
34 law or regulation that expressly requires the disclosure or  
35 verification of salary history for employment purposes, or requires  
36 knowledge of salary history to determine an employee's  
37 compensation;

38 (3) any attempt by an employer to obtain, or verify a job  
39 applicant's disclosure of, non-salary related information when  
40 conducting a background check on the job applicant, provided that,  
41 when requesting information for the background check, the  
42 employer shall specify that salary history information is not to be  
43 disclosed. If, notwithstanding that specification, salary history  
44 information is disclosed, the employer shall not retain that

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 information or consider it when determining the salary, benefits, or  
2 other compensation of the applicant; or

3 (4) employer inquiries regarding an applicant's previous  
4 experience with incentive and commission plans and the terms and  
5 conditions of the plans, provided that the employer shall not seek or  
6 require the applicant to report information about the amount of  
7 earnings of the applicant in connection with the plans, and that the  
8 employer shall not make any inquiry regarding the applicant's  
9 previous experience with incentive and commission plans unless the  
10 employment opening with the employer includes an incentive or  
11 commission component as part of the total compensation program.

12 d. An applicant may provide salary history information,  
13 including information regarding the applicant's experience with  
14 incentive or commission plans, to an employment agency contacted  
15 by the applicant for assistance in searching for and identifying  
16 employment opportunities, but the employment agency shall not  
17 share the information with potential employers without the express  
18 written consent of the applicant.

19 e. (1) Any employer who violates this section shall be liable  
20 for a civil penalty in an amount not to exceed \$1,000 for the first  
21 violation, \$5,000 for the second violation, and \$10,000 for each  
22 subsequent violation collectible by the Commissioner of Labor and  
23 Workforce Development in a summary proceeding pursuant to the  
24 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
25 et seq.).

26 (2) If an applicant for a job is a member of a protected class as  
27 defined in subsection t. of section 11 of P.L.1945, c.169 (C.10:5-  
28 12), an employer shall be subject to section 2 of  
29 P.L. , c. (C. ) ( pending before the Legislature as this bill)  
30 for any violation of this section.

31 f. Nothing in this section shall be construed as prohibiting an  
32 employer from offering an applicant for a job information regarding  
33 wage or salary rates set for the job by collective bargaining  
34 agreements or by civil service or other laws, or from paying those  
35 rates if the applicant is hired.

36 g. Nothing in this section shall be construed to prohibit an  
37 employer who does business, employs persons, or takes applications  
38 for employment in at least one state other than New Jersey, from  
39 including an inquiry regarding salary history on an employment  
40 application, so long as immediately preceding the salary history  
41 inquiry on the employment application it states that an applicant for  
42 a position the physical location of which will be in whole, or  
43 substantial part, in New Jersey is instructed not to answer the salary  
44 history inquiry.

45 h. Nothing in this section shall be construed to prohibit an  
46 employer from acquiring salary history information that is publicly  
47 available, but an employer shall not retain or consider that  
48 information when determining the salary, benefits, or other

1 compensation of the applicant unless the applicant voluntarily,  
2 without employer prompting or coercion, provides the employer  
3 with salary history. An applicant's refusal to volunteer  
4 compensation information shall not be considered in any  
5 employment decisions.

6  
7 2. (New section) a. Except as otherwise provided by section 1  
8 of P.L. , c. (C. ) (pending before the Legislature as this  
9 bill), if a job applicant is a member of a protected class as defined  
10 in subsection t. of section 11 of P.L.1945, c.169 (C.10:5-12), it shall  
11 be an unlawful employment practice in violation of P.L.1945, c.169  
12 (C.10:5-1 et seq.) for an employer:

13 (1) to screen a job applicant based on the applicant's salary  
14 history, including, but not limited to, the applicant's prior wages,  
15 salaries, or benefits; or

16 (2) to require that the applicant's salary history satisfy any  
17 minimum or maximum criteria.

18 b. An award of punitive damages shall not be an available  
19 remedy for a violation of this section.

20  
21 3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read  
22 as follows:

23 5. Notwithstanding any provision of law to the contrary, relief  
24 for having been required to retire in violation of the provisions of  
25 section 11 of P.L.1945, c. 169 (C.10:5-12), shall be available to the  
26 person aggrieved by that violation solely through the procedure  
27 initiated by filing a complaint with the Attorney General under the  
28 provisions of P.L.1945, c. 169 (C.10:5-1 et seq.).

29 Notwithstanding any provision to the contrary of section 16 of  
30 P.L.1945, c. 169 (C.10:5-17) or any other law, relief ordered for or  
31 granted to a person in connection with **his** the person being  
32 required to retire in violation of the provisions of section 11 of  
33 P.L.1945, c. 169 (C.10:5-12) shall be limited to **his** the person's  
34 reinstatement with back pay and interest.

35 This section shall not apply to a violation regarding an inquiry as  
36 to an applicant's salary history pursuant to section 2 of  
37 P.L. , c. (C. ) (pending before the Legislature as this bill).  
38 (cf: P.L.1985, c.73, s.5)

39  
40 4. Section 16 of P.L.1945, c.169 (C.10:5-17) is amended to  
41 read as follows:

42 16. If, upon all evidence at the hearing, the director shall find  
43 that the respondent has engaged in any unlawful employment  
44 practice or unlawful discrimination as defined in **this act**  
45 P.L.1945, c.169 (C.10:5-1 et seq.), the director shall state his  
46 findings of fact and conclusions of law and shall issue and cause to  
47 be served on such respondent an order requiring such respondent to  
48 cease and desist from such unlawful employment practice or

1 unlawful discrimination and to take such affirmative action,  
2 including, but not limited to, hiring, reinstatement or upgrading of  
3 employees, with or without back pay, or restoration to membership,  
4 in any respondent labor organization, or extending full and equal  
5 accommodations, advantages, facilities, and privileges to all  
6 persons, as, in the judgment of the director, will effectuate the  
7 purpose of **[this act]** P.L.1945, c.169 (C.10:5-1 et seq.), and  
8 including a requirement for report of the manner of compliance. If  
9 the conduct violative of **[this act]** P.L.1945, c.169 (C.10:5-  
10 1 et seq.) constitutes any form of unlawful economic discrimination  
11 prohibited in subsection 1., m., or n. of section 11 of P.L.1945,  
12 c.169 (C.10:5-12), or any form of unlawful employment practice  
13 prohibited by subsection r. or t. of section 11 of P.L.1945, c.169  
14 (C.10:5-12), the affirmative action taken by the director may  
15 include the award of three-fold damages to the person or persons  
16 aggrieved by the violation. The director shall have the power to use  
17 reasonably certain bases, including but not limited to list, catalogue  
18 or market prices or values, or contract or advertised terms and  
19 conditions, in order to determine particulars or performance in  
20 giving appropriate remedy. In addition to any other remedies  
21 provided by P.L.1945, c.169 (C.10:5-1 et seq.), a prevailing  
22 complainant may recover damages to compensate for emotional  
23 distress caused by the activities found to be in violation of  
24 P.L.1945, c.169 (C.10:5-1 et seq.) to the same extent as is available  
25 in common law tort actions. In any case in which the director,  
26 Attorney General, or appropriate organization is a complainant, on  
27 behalf of named or unnamed individuals or a class of individuals,  
28 any of the remedies or relief allowed by **[this act]** P.L.1945, c.169  
29 (C.10:5-1 et seq.) may be awarded or applied to the named or  
30 unnamed individual victims of discrimination. If, upon all evidence,  
31 the director shall find that the respondent has not engaged in any  
32 such unlawful practice or unlawful discrimination, the director shall  
33 state his findings of fact and conclusions of law and shall issue and  
34 cause to be served on the complainant an order dismissing the said  
35 complaint as to such respondent.

36 This section shall not apply to a violation regarding an inquiry as  
37 to an applicant's salary history pursuant to section 2 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill).  
39 (cf: P.L.2018, c.9, s.4)

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41 5. Section 6 of P.L.1979, c.404 (C.10:5-27.1) is amended to  
42 read as follows:

43 6. In any action or proceeding brought under **[this act]**  
44 P.L.1945, c.169 (C.10:5-1 et seq.), the prevailing party may be  
45 awarded a reasonable attorney's fee as part of the cost, provided  
46 however, that no attorney's fee shall be awarded to the respondent  
47 unless there is a determination that the complainant brought the  
48 charge in bad faith. If the complainant's case was initiated by a

1 housing authority on behalf of a tenant for a violation of paragraph  
2 (4) of subsection g. or paragraph (4) of subsection h. of section 11  
3 of P.L.1945, c.169 (C.10:5-12) and the complainant prevailed,  
4 reasonable costs, including attorney fees, of the housing authority  
5 may be assessed against a nonprevailing respondent. If the  
6 complainant's case was presented by the attorney for the division  
7 and the complainant prevailed, the reasonable costs, including  
8 attorney fees, of such representation may be assessed against a  
9 nonprevailing respondent.

10 Notwithstanding any other provision of law to the contrary, an  
11 award of an attorney's fee in accordance with this section shall not  
12 be available as a remedy to violations of section 2 of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill).  
14 (cf: P.L.2002, c.82, s.4)

15

16 6. This act shall take effect on the first day of the sixth month  
17 next following enactment.