

# New York Toughens Equal Pay Laws: State Contractors Must Disclose Salary Data, State Agencies Cannot Ask Applicants for Salary History

By K. Joy Chin

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New York Governor Andrew Cuomo has signed two executive orders: one requiring state contractors to regularly disclose employee job title and salary data and the other prohibiting state agencies from making pre-job offer inquiries about candidates' prior or current salary. The executive orders are aimed at eliminating the gender wage gap and strengthening equal pay protection in New York.

NYS Contractors Must Disclose Employee Job Titles, Salary  
[Executive Order 162](#) requires state contractors and their subcontractors to submit job title and salary for each employee working on a contract, in addition to the equal

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employment opportunity information (such as sex, race, and ethnicity) already required. If a contractor cannot identify the employees working directly on a state contract, the contractor must submit the information for the entire workforce. The new reporting requirements will apply to state contracts issued and executed on or after June 1, 2017. The information must be reported to state contracting agencies on a quarterly basis for all prime contracts over \$25,000 and on a monthly basis for prime construction contracts that exceed \$100,000.

## NYS State Agencies Prohibited from Asking for or Using Salary History to Determine Pay

[Executive Order 161](#) prohibits state agencies from asking an applicant for current or prior salary before a conditional offer of employment with compensation. Once a conditional offer of employment has been extended, an agency may request and verify salary information. State agencies that already possess an applicant's prior salary information are prohibited from relying upon it to determine the applicant's salary, unless otherwise required by law or a collective bargaining agreement.

## Governor Cuomo's "New York Promise" Agenda

The two executive orders are part of a package of reforms, titled the "New York Promise" agenda, to advance principles of social justice, affirm New York's progressive values, and set a national standard for protections against all forms of discrimination, according to a [press release](#) issued by the governor's office. The executive orders build on the Women's Equality Act signed in 2015, which strengthened pay equity provisions in New York by prohibiting employers from retaliating against employees who share wage information. The Act also created stricter penalties and increased damages for employers who pay workers less on account of gender, race, or ethnicity. (For more, see our article, [New York Enacts Gender Equity Laws](#).)

Upon signing the Executive Orders, Governor Cuomo released a statement explaining the driving force behind his "New York Promise" agenda. "At these stormy times of instability and confusion, New York must serve as a safe harbor for the progressive principles and social justice that made America," Cuomo stated. "We will hold the torch high to light the way toward opportunity, because that is New York's promise. This promise is not just in words but in actions and we will push even further to advance the social progress we have made and continue the fight."

## Trending State Pay Equity Laws

Governor Cuomo's executive orders come in a climate of increasing regulatory measures toward closing the pay gap at state and local levels, with a particular focus on restrictions on the use of salary history to set pay. For example, in November 2016, New York City Mayor Bill de Blasio signed an executive order prohibiting city agencies from soliciting salary history during the job application process. In [California](#), effective January 1, 2017, employers are prohibited from relying solely on an employee's prior salary to justify a disparity in salary between similarly situated employees who perform "substantially similar" work. In [Massachusetts](#), beginning July 1, 2018, employers will be prohibited from screening applicants based on salary history or seeking salary history prior to extending a conditional offer of employment. Similar laws are being considered in New York City, Philadelphia, and New Jersey.

## Implications for Employers

Private sector employers can do several things to prepare for the rollout of the New York state executive orders. Employers entering into state contracts should review their systems to ensure they can track which employees are working on state contracts. Accurate tracking will allow state contractors to control the amount of pay data they must submit to New York State.

Given the increasing number of state and local agencies taking legislative steps to close the pay gap, multi-establishment employers operating in different states should keep abreast of changes in state and local equal pay legislation. Multi-state employers should begin reviewing recruitment and hiring policies practices to prepare for potential changes to equal pay laws on the horizon. Jackson Lewis will keep you informed on significant changes to pay equity laws forthcoming. Please contact us with any questions.

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