

## KNOW YOUR RIGHTS: New York's New Equal Pay Laws

*Knowledge is power. This toolkit is designed to help New Yorkers understand their rights under the State's new salary history ban and its updated equal pay law. It explains what these laws do and provides answers to some frequently-asked questions about how these laws work. Understanding these laws can help you figure out whether you're being underpaid and take action if you are.*

*If you have any questions about your rights under these, or other workplace laws, A Better Balance is here to help through our free, confidential legal helpline at 1-833-NEED-ABB.*



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Questions? Call our free legal helpline at 1-833-NEED-ABB

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### Salary History Ban

In June 2019, New York State passed a ban on the use of salary history in hiring and promotion.<sup>1</sup> **This law went into effect on January 6, 2020.**

#### What does the law do?

- This law, which applies to all public and private employees, makes it illegal for employers to:
  - rely on your salary history in deciding whether to offer you a job, or in determining your compensation for a new job.
  - ask for or require information about your past salary—orally or in writing—as a condition to be interviewed or as a condition of continuing to be considered for a new job.
  - ask for or require information about your current salary if you are being considered for a promotion
  - seek information about your past salary from your former employer, either
  - retaliate against you—including by refusing to interview, hire, promote, or otherwise employ you—based on your salary history. It is also illegal for them to retaliate against you for not providing your salary history or filing a complaint with the New York State Department of Labor alleging that they violated this law.
- Nothing in this law prevents you from sharing your salary history with your employer or potential employer if you want to do so. An employer can't prompt you to offer this information, but you can volunteer it if you wish.
- An employer can confirm your wage or salary history only if:
  - They have made you an offer of employment with compensation, and you respond to their offer by providing your prior wage or salary information in an effort to get the employer to offer you a higher wage or salary.



<sup>1</sup> N.Y. Labor Law § 194-A (2019).

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### Who Does This Law Cover?

- This law covers employees who work for an employer of any size, including public employees.
- This law does not cover independent contractors.

**New York City** also has a salary history ban, which went into effect on October 31, 2017.<sup>2</sup>

- The New York City law, like the State law, prohibits employers from inquiring about job applicants' salary history.
- That means employers can't ask job applicants or their former employers to reveal the applicant's salary history, and the employer can't search publicly available records or reports to discover an applicant's salary history.
- The law also prohibits employers from relying on an applicant's salary history in setting or negotiating a job applicant's compensation.
- Unlike the State law, the City law does not prevent an employer from inquiring about the salary history of current employees.



<sup>2</sup> N.Y.C. Admin. Code Tit. 8 § 25 (2019).

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## Comparing New York State and New York City's Salary History Bans

	New York State	New York City
Illegal to Ask About Salary History during a Job Interview for a New Employer	Yes	Yes
Illegal for an Employer to Rely on Salary History in Setting a New Employee's Salary	Yes	Yes
Illegal to Require Past or Current Salary on Job Application	Yes	Yes
Illegal to Retaliate Against You for Refusing to Provide Salary History or Filing a Complaint	Yes	Yes
Illegal for an Employer to Inquire About Salary History for Promotions and Internal Hires	Yes	No
Illegal for an Employer to Rely on Salary History to Set Compensation for Promotions and Internal Hires	Yes	No
Covers Public Employees	Yes	Yes, but this law does not include public employees who are covered by a collective bargaining agreement.



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### Salary History Ban: Frequently Asked Questions

**Q: What information can my employer (if I'm applying for a promotion or internal transfer) or a potential employer (if I'm applying for a new job) ask me for?**

A: Under the New York State law, your employer or potential employer can ask you for information about your compensation expectations or demands during a job interview, application, or negotiation. They may not ask you about your salary history or prior compensation both on the job application or during an interview.

**Q: What if a recruiter or a headhunter is hiring me for the job? Can they inquire about my salary and pass that information on to my potential employer?**

A: No. This law applies to recruiters and headhunters just like it does to employers. You can voluntarily share your salary with a recruiter if you want to, but they can't prompt you to share that information.

**Q: Can my employer or potential employer ask my current or former colleagues, or my former employer, for my salary history information?**

A: Generally, no. An employer cannot seek the wage or salary history of a job applicant or a current employee from your current or former employer. They also can't seek that information from any "agent" of your current or former employer, which likely means that they can't seek this information from most of your current or former coworkers. There is an exception to this, though. If they made you a salary offer and you use your wage or salary history to support a higher counteroffer, an employer can confirm your wage or salary history, including by confirming it with current or former employers or coworkers.

**Q: Can I share my salary if I want to?**

A: Yes! If you would like to share your previous salary as part of the hiring process or negotiation of your compensation package, you can. The New York State and New York City laws preserve your right to, voluntarily and without prompting, disclose your salary. Under the State law, if your employer or potential employer makes you a wage or salary offer, and you provide information about your prior salary in order to negotiate a higher wage or salary, your employer or potential employer is entitled to confirm your prior salary. The City law allows verification of salary history in accordance with State law.

**Q: How can I negotiate my salary given this law?**

A: This law gives you a great opportunity to focus on factors other than your salary history in negotiating your salary. You can focus on your skills and experience—it can help if you come prepared with records of past performance reviews, performance metrics, or other information. You might want to explain how you have handled similar work in the past, or how your work experience prepares you to be successful in the position you're applying for. It can also help to go into negotiations with information about how others in your industry are paid for similar work, and what qualifications someone in the type of position you're applying for typically has. That way, you can demonstrate your qualifications as compared to the industry standard, and use that to argue for comparable or better pay.

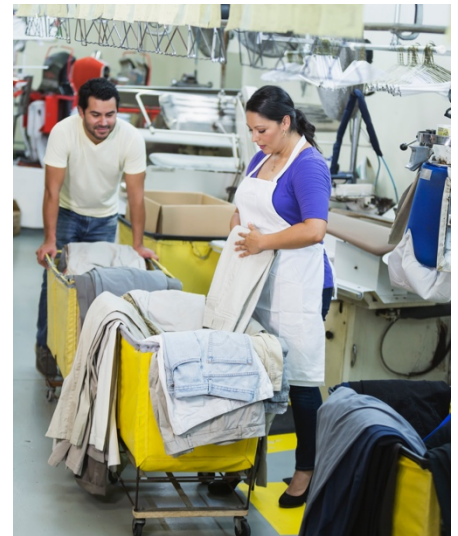
**Q: How should I set my salary expectations when I'm interviewing for a promotion or a new job?**

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A: Try to do some research before going into a negotiation so that you can set your salary expectations around the standard rates for the type of position you are applying for. You can look for information on websites like Glassdoor.com and PayScale.com. You can also ask others in your industry or within your company about their salaries to try to get a better sense of what the kind of job you're applying for pays.

**Q: I was filling out a job application, and one of the questions on the form asked for salary history. What should I do?**

A: You can call A Better Balance if you have questions about your rights under the new law. A Better Balance operates a free legal helpline Monday through Friday at 1-833-NEED-ABB (1-833-633-3222). You can also file a lawsuit or a complaint with the New York State Department of Labor and, if applicable, the New York City Commission on Human Rights (see below). But even if you are not interested in pursuing legal action, you can alert the New York State Department of Labor to a violation of the law. You can make a report (with or without including personal information) at <https://www.ny.gov/content/report-suspected-workplace-violations> or by calling 1-888-469-7365. If you are employed in New York City and believe the job for which you were applying is covered by the City's salary history ban, you can also report a violation to the New York City Commission on Human Right (with or without including personal information) at <https://www1.nyc.gov/site/cchr/about/report-discrimination.page>.



**Q: I was interviewing for a job or a promotion and was told I had to provide my salary history. What can I do?**

A: As described above, you have the option of filing a lawsuit or reporting a violation of the law or making a complaint to the New York State Department of Labor and, if applicable, to the New York City Commission on Human Rights.

If you are presented with an illegal question about your salary history, you do not need to answer the question. Instead, you can consider responding in terms of your compensation expectations for the position. You could indicate that you would like to discuss compensation in relation to the responsibilities and skill required by the job for which you are applying, not the jobs you have held in the past. You can also reframe the question, focusing your response on what you will bring to the table, rather than on your past compensation.

**Q: I think I was hurt by a violation of this law—I refused to provide my salary history when asked and didn't get an interview/job/promotion, or I did provide it and think I got a lower salary as a result. What can I do?**

A: The New York State law includes a private right of action, which means that you have the option of filing a lawsuit if you were harmed by a violation of the law. You also have the option of filing a complaint with the New York State Department of Labor. If you are employed in New York City and are covered by the City's Salary History Ban, you also have the option of filing a complaint with the New York City Commission on Human Rights. You can call A Better Balance if you have questions about your rights under the new law. A Better Balance operates a free legal helpline Monday through Friday at 1-833-NEED-ABB (1-833-633-3222).

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### Equal Pay for Substantially Similar Work

In June 2019, New York State also passed a law prohibiting employers from paying employees less based on a broad range of characteristics beyond sex if they perform “substantially similar work” as their colleagues who are not in that protected class.<sup>3</sup> **This law went into effect on October 8, 2019.**

#### What does this law do?

- This law applies to all private employers in the state. If you are a government employee, you may have rights under certain federal or local laws.
- Under this law, paying employees with status within one or more protected classes less than an employee without status within the same protected class or classes for equal work or “substantially similar work” based on a composite of skill, effort, and responsibility, and performed under similar working conditions.
  - For instance, an employer can’t pay a Project Manager and a Project Team Lead or a janitor and a housekeeper differently if they perform “substantially similar work.”
- What is a “protected class”?
  - “Protected class” includes age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim.
- Employees can pay employees differently only if that difference is based on:
  - A seniority system;
  - A merit system;
  - A system which measures earnings by quantity or quality of production; or
  - A bona fide factor other than status within one or more protected classes, such as education, training, or experience. This factor must be job-related and consistent with business necessity and cannot be derived from a wage differential based on status within a protected class.



<sup>3</sup> N.Y. Labor Law § 194 (2019).

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- Since 2016, employers must affirmatively demonstrate that any pay differentials among employees who do the same or substantially similar work are based on one of the above-listed permissible reasons.

### Who Does This Law Cover?

- This law covers employees who work for an employer of any size
- This law does not cover independent contractors or public employers

### Frequently Asked Questions: Substantially Similar Work

**Q: Employee A is a Black woman. Employee B is a white woman. Both work at Company Y, and both do the same job. Can Company Y pay them differently?**

A: Probably not! The New York law is not only applicable to pay disparities between men and women. The law prohibits employers from paying an employee who is a member of a protected class (including but not limited to race) differently from someone who is not a member of that protected class for the same or substantially similar work, with a few exceptions.

**Q: Employee A is a Black man. Employee B is a white man. Both work at Company Y, and both do the same job. Can Company Y pay them differently?**

A: Probably not! The New York law applies to issues of pay disparity that do not exclusively involve sex, but do involve a disparity in pay between a member of a different protected class and someone else doing the same or substantially similar work who is not a member of that protected class.

**Q: Employee A is a Black woman. Employee B is a white man. Both work at Company Y, and both do the same job. Can Company Y pay them differently?**

A: Probably not! The New York law prohibits employers from paying employees with status within more than one protected classes less than an employee without status within the same protected classes.

**Q: Employee A is a Black woman. Employee B is a white woman. Both work at Company Y. They have different titles, but both of them have jobs that involve data analysis, building and implementing models, and running simulations.**

A: Probably not! The New York law makes it illegal for employers to pay employees differently based on “substantially similar work,” with a few exceptions. Whether work is substantially similar is not based on job title—it’s based on a composite of skill, effort, and responsibility, and the similarity of working conditions.





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**Q: Employee A is a white woman. Employee B is a white man. Both work at Company Y, and both do the same job. Employee B has worked at Company Y five years longer than Employee A. Can Company Y pay Employee B more than Employee A?**

A: Maybe. The New York State law allows employers to pay employees doing the same or substantially similar work differently for a few narrow reasons. If Company Y has a system in place that ties pay to seniority, they may be allowed to pay employees doing the same or substantially similar work differently on that basis.

**Q: How do I know if I am being paid differently from my colleagues who do the same or substantially similar work?**

A: Ask a coworker. Under New York law, your employer cannot prohibit you from openly discussing with or disclosing your salary to a co-worker or retaliate against you for sharing pay information with colleagues.

**Q: I found out that I am being paid less than my colleague who does the same or substantially similar work. What can I do?**

A: Your employer may not know about the new law. You can inform your employer about their legal obligations and attempt to self-advocate. You also have the option of filing a complaint with the New York State Department of Labor. You can call A Better Balance if you have questions about your rights under the new law. A Better Balance operates a free legal helpline Monday through Friday at 1-833-NEED-ABB (1-833-633-3222).



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### The State of Equal Pay in New York

New York State and New York City have made a lot of progress towards pay equity in recent years—the laws explained in this face sheet are evidence of that. But there is still more work to be done. Did you know:

- In 2016, Black women in New York City made only 57 cents for every dollar earned by white, non-Hispanic men, while Latina women made 49 cents for every dollar earned by white, non-Hispanic men—larger gaps than exist in New York State and in the United States as a whole.<sup>4</sup>
- In 2014, Asian women in New York City earned only 37 cents for every dollar earned by white, non-Hispanic men, despite the fact that national gap in wages between Asian women and white, non-Hispanic men is 87 cents for every dollar.<sup>5</sup>
- Mothers face a higher wage gap than do women without children: Nationally, mothers make, on average, 80 cents for every dollar a white, non-Hispanic man makes, compared to 87 for women on average.



### Other Equal Pay Laws to Know

- In New York State, it is illegal for your employer to retaliate against you for sharing your salary with a coworker.<sup>6</sup> That said, your employer may, in a written policy provided to all employees, place reasonable limits on discussing salary while in the workplace or during the workday.
- New York State's Pregnant Workers' Fairness Act went into effect on January 19, 2016. If you need a "reasonable accommodation" because of your pregnancy, childbirth, or other pregnancy-related condition and your employer has four or more employees, your employer has to give it to you unless it would be really difficult or expensive (an "undue hardship").

<sup>4</sup> Office of the New York City Comptroller, *Inside the Gender Wage Gap, Part I: Earnings of Black Women in New York City* (2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/BW-Equal-Pay-Day.pdf>; Office of the New York City Comptroller, *Inside the Gender Wage Gap, Part II: Earnings for Latina Women in New York City* (2018), <https://comptroller.nyc.gov/reports/gender-wage-gap/inside-the-gender-wage-gap/inside-the-gender-wage-gap-part-ii-earnings-of-latinas-in-new-york-city/>.

<sup>5</sup> Letitia James, N.Y.C. Pub. Advocate's Office, *Policy Report: Advancing Pay Equity in New York City 2* (2016).

<sup>6</sup> N.Y. Labor Law § 194-4 (2019).