



May 2017

A-3480 ACS and S-2536 – “Concerns Employer Inquiries about Worker’s Wage and Salary Experience”

Both bills are identical currently and are efforts of the NJ Legislature to prevent previous wage and salary histories to be used to perpetuate prior gender-based pay gaps amending the NJ Law Against Discrimination.

A-3480 ACS¹ and S-2536²

1. Prohibits employers requiring job applicants to provide wage and salary history, including benefits, and prohibits the practice that this history would need to meet some minimum or maximum criteria for consideration, as well as using this information to determine a salary amount for the employer to offer and negotiate with the job applicant at any stage of the hiring process, including finalizing of the employment contract.
2. Prohibits any employer from inquiring in any way about the salary history of a job applicant including compensation and benefits (presumably from other sources such as former employers) without the written voluntarily-provided authorization by the job applicant.

NOTE: This bill does not address the situation when a job applicant voluntarily discloses previous pay, wage and compensation history.

The New Jersey Staffing Alliance (“NJSA”) supports the current federal and state laws regarding equal pay and gender discrimination. However these legislative proposals have some material issues and we recommend consideration of the following recommendations prior to final passage by the Senate and approval by the Governor’s office.

Challenges to New Jersey’s Staffing Industry

These proposed laws apply to both temporary staffing firms and recruiting firms (who are viewed in these bills to be acting as “agents” for the ultimate employer). The current proposals do not

¹http://www.njleg.state.nj.us/2016/Bills/A3500/3480_U1.PDF Underlined sections are the proposed new language to be added to the current statute.

² http://www.njleg.state.nj.us/2016/Bills/S3000/2536_I1.PDF Underlined sections are the proposed new language to be added to the current statute.

provide appropriate language addressing the unique employment circumstances associated with temporary staffing employers as well as the “agency role” of the recruiting industry supporting the goals and objectives of the individual NJ citizen, rather than the employer, searching for his/her next career opportunity.

Unique employment circumstances associated with temporary staffing firms:

- The general assumption of the bill is that an individual becomes employed by an employer once, followed by a continuous period of employment. The key assumption is that employer and job applicant will have ordinarily only one cycle of consideration for employment that will end with the applicant being hired or not hired. In this circumstance the vast majority of employers will not have any prior knowledge or record of an individual’s previous wage or salary history.
 - However, a temporary staffing firm also has its first cycle of consideration for employment of an individual. But different from “typical employer situations,” there are then many cycles of “re-employment” of the same individual as assignments with the temporary staffing firms start and end, either with the individual being offered and accepting a new assignment or, after the individual goes to other firms, the individual then returns to be employed by the original temporary staffing firm on a new assignment. As a result, the temporary staffing firm may have knowledge of the individual’s previous compensation history – at least with the temporary staffing firm itself and the individual’s history with any other employers if authorized by the individual in accordance with this proposal.
- ***RECOMMENDATION: Add language that states: Previous knowledge obtained as a consequence of prior employment with the employer and/or previous salary history obtained by the employer in accordance with these proposals and consideration of this history by the employer in making an employment offer to the individual will not be violations of this law.***

Unique relationship between job applicant and recruiting firms:

- Recruiting firms are often contacted directly by NJ citizens searching for their next career opportunity. In these situations the “client” of the recruiting firm is the individual. The recruiting firm spends time working with the individual to understand his/her previous and current employment history, personal background, strengths, and experiences in order to understand the individual’s past and present situation and how they support the individual’s desires for their next career opportunity. Once the recruiting firm has a clear picture of the individual and his/her career objective (job duties and responsibilities, location and compensation expectations), the recruiting firm then contacts employers within the target population and location to search for employment opportunities to present the individual for the individual’s consideration. During employment negotiations recruiting firms often assist the individual specifically in negotiating compensation. Not having access to this background information would limit the recruiting agency’s ability

to assist the individual achieve his/her objectives.

- In these situations the ability of recruiting firms to best serve the needs and benefits of the individual would be diminished if the recruiting firm is not knowledgeable of both the individual's compensation history and expectations. How can a recruiting firm offer advice and insight without understanding the individual's perspective which is built over years of personal experience?
- ***RECOMMENDATION: Add language that states: The job applicant may provide his/her current and previous compensation history, including but not limited to salary, wage, commissions, incentives, benefits and other compensation, including a description of each and its terms and conditions to an employment agency initially contacted by the job applicant for assistance in searching for and identifying the individual's next employment opportunity. An employment agency receiving this information from the applicant is prohibited from sharing with the employer actual earnings or total compensation history except as allowed by law, but may share the terms and conditions of an individual's present and/or previous incentive/commission programs.***

Incentive and/or Commission Plans:

These legislative proposals address job positions which are principally wage or salary based. What about positions that are commission-only or are a blend of wage/salary and incentives/commissions? The individual's previous or current experience with commission and/or incentive programs is of major importance to the discussions. The employer may not have to know the individual's actual compensation earnings history but discussing previous plan designs and the individual's experience and attitudes towards them would aid the employer greatly in fashioning or explaining the employer's plans in a more beneficial way for the applicant.

- ***RECOMMENDATION: Add language that states: An employer may inquire, as it pertains to job openings that include an incentive or commission component as part of the total compensation program, the job applicant's previous experience with incentive and commission plans and their terms and conditions without seeking or requiring the job applicant to report specific earnings information from these programs except as allowed by this proposal.***

New Jersey Staffing Alliance and the Staffing Industry in New Jersey

The New Jersey Staffing Alliance ("NJSA") is an industry association representing the staffing industry (temporary staffing and employment agency/direct hire firms) in New Jersey whose primary mission is the employment of New Jersey's citizens for the benefit of private business, non-profit and public entities so they can be more successful in this challenging economic environment. The industry has over 2,000 offices across the state, employs every day over

108,900 of New Jersey's citizens, and contributes \$3.2 Billion in annual payroll to New Jersey's economy while providing services to firms and organizations across the state. (See the attached "Important Facts about New Jersey's Staffing Industry")

SUMMARY

NJSA encourages the Senate and their committees and the Governor's Office to consider the input from the business associations that represent employers impacted by these legislative proposals.

As mentioned at the beginning of this document NJSA does support the bill's overriding principles and objectives, but this proposed legislation raises major issues and concerns. Instead of passing the legislation in its current form, NJSA encourages its sponsors and the Legislative Leadership to consider and address the above concerns in their deliberations.

NJSA would welcome the opportunity to discuss its views on this legislation with this bill's sponsors, co-sponsors, committee members, and other elected representatives.

Respectfully submitted,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Richard Scott
Vice President, NJSA Legal Legislative Committee

For additional information, contact the NJSA headquarters at 170 Kinnelon Road, Ste. 33, Kinnelon, New Jersey 07405. Tel: 973-283-0072; Fax: 973-838-7124; patk@njsa.com; www.njsa.com.



Important Facts About New Jersey's Staffing Industry!



22%

Since 2009, NJ Staffing Industry created 22% of NJ's increase in Private Sector Employment¹



\$3.2 Billion

NJ Staffing Industry's Annual Payroll²



108,900 – 3.1%
of all NJ Private Sector Employees

NJ citizens are employed every day by NJ's Staffing Industry³

Who are NJ's Staffing Employees⁴?

15%: 19-24 years old
49%: 25-44 years old
37%: 45-64 years old



53%: Female
47%: Male



2,149

Number of staffing firm business locations serving NJ communities⁵



\$31,931

Average Annual Wage paid to NJ Staffing Industry's employees⁶

¹2009 vs 2015

²2015

³2016

© New Jersey Staffing Alliance 2017

⁴2014 EMSI/ASA

⁵2015

⁶2015

Sources: Bureau of Labor Statistics, EMSI/Careerbuilder, American Staffing Association