



May 2017

**Impact on the Staffing Industry:
A-3480 ACS and S-2536 – “Concerns Employer Inquiries about Worker’s
Wage and Salary Experience”**

What the bills propose:

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

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.

Challenges to New Jersey’s Staffing Industry

These proposed laws apply to both temporary staffing firms and recruiting firms (acting as agents for the ultimate employer).

Job Application Forms/Professional Profile Forms: These forms will have to be modified to eliminate the portions that request information regarding compensation, salary and wage levels at previous employment situations.

Interview Standards/Training: Asking any questions regarding compensation, benefits, wage and salary history would be prohibited during the interview process. Instead the conversations would be focused on what level of compensation would the individual want at their next assignment/job opportunity and the specific employee requests/requirements in order to find

acceptable temporary assignments that will meet their compensation requirements.

Reference Checks: Reference checks cannot cover previous wage, benefits and other compensation matters unless you have received the voluntary (without coercion) written authorization of the job applicant.

Reassignment of Former Temporary Employees: Staffing firms will need to train their recruiters to not factor in previous wage history with the same staffing firm as a basis for the new wage rate being offered on a new assignment. Each assignment will have to be negotiated on its own merits.

Submittal Offers: Submittal offers to the job candidate must refer only to the current job opportunity's wage rate that would be paid to the prospective candidate without reference to or discussion of the candidate's previous wage history with the same staffing firm or other compensation history obtained during the course of the firm's relationship with the candidate.

Specific Training: Staff will have to receive special training on how to handle situations when a job applicant or candidate voluntarily discloses his or her compensation history.

Specific comments for NJ recruiting firms:

Candidate's Prior Year W-2s: Recruiting firms will no longer be able to get this information and share it except with written voluntary authorization of the candidate.

History of Benefit Programs, Incentives, Commissions and other Variable Compensation Programs: For job opportunities historically with incentive programs (for example: sales and management positions), recruiting firms will not be able to ask about a candidate's previous experience with variable compensation plans as well as benefit programs (weeks of vacation, retirement plan matching levels, etc.). Instead the conversations would have to be focused on understanding individual's previous results (sales, contracts, etc.) in measures other than resulting compensation received and commission/incentive program details.

Candidate Voluntarily Discloses his/her Compensation History: This is not addressed in the current bills. There are obvious situations that are not clear:

- If a recruiting firm was solicited by a candidate to find a position for him/her, and voluntarily disclosed compensation history, the recruiting firm currently does not necessarily represent a client/direct employer. Can the recruiting firm share this information with a future client?
- If the same information was obtained while representing a specific client requirement – with the recruiting firm acting as an agent for the client, does the client have access to this information as well?

Candidate Profile Interviewing Regarding Compensation: Regarding compensation, the primary focus has to be prospective: What does the candidate want for compensation in their next role (total compensation, salary, incentive, benefit programs, etc.)? What kind of incentive

program design and potential would be attractive to the candidate in his/her next position? What benefit programs and designs are important to the candidate in his/her next position? Etc.

The Recruiting Firm would have to be knowledgeable enough in compensation levels in the current marketplace to provide constructive feedback as to the reasonableness of the candidate's expectations and work with the candidate on these expectations without reference to the individual's current or past compensation history.

Working with Former Candidates: As with temporary staffing firms, recruiting firms representing candidates with whom they have previous experience have the same issue of having prior compensation history knowledge. Staff training is required to insure recruiters do not use or consider this information in their current interactions with both the candidate and the client.