

Revised 2/14/2018

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW amending Section 700.03 of the Laws of Westchester County to provide that it shall, in certain circumstances, be an unlawful discriminatory practice to rely upon, request or seek the wage history of a prospective employee.”

The purpose of this Local Law is to prevent the perpetuation of the gender wage gap. Your Committee is aware that a major 2013 study from the American Association of University Women found that women get paid 6.6 percent less than men in their first jobs, controlling for occupation, college major, hours worked, and location. When it comes to subsequent jobs, employers in most industries often inquire about a candidate’s salary history as a basis for establishing their new salary. In this way, salary history questions can exacerbate gender pay inequality over time. Indeed, according to a Pew Research Center analysis of median hourly pay in 2015, women in the United States on average earn only 83% of what men earn, across all industries.

Your Committee is also aware that studies have shown that women tend to negotiate less than men during the job application process; that when they do, they tend to ask for less than men; and that employers do not react as well when women negotiate over salary. Specifically, research has shown that men and women who negotiate their salaries using the same script are perceived differently by interviewers, and that while all people who negotiate their salaries risk seeming “unlikable,” women’s employment

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prospects suffer more from such a label. The proposed Local Law levels the playing field in this regard by prohibiting prospective employers from inquiring as to the wage history of any potential hire.

The proposed Local Law will also help older workers, regardless of gender. Your Committee is aware that experienced workers who leave or lose a higher-paying job sometimes have difficulty getting interviews with prospective employers who believe they cannot afford to pay their previous salary, even if the applicant is willing to accept less pay for the new job. Similarly, the proposed Local Law helps individuals attempting to return to the workforce after a long hiatus, i.e. to care for an elderly relative or child, as their new salaries will no longer be anchored to a lower salary that may no longer be industry standard.

Your Committee is aware that a number of states, including Massachusetts, Delaware, Oregon and California, have passed similar legislation, as has New York City. Wage history legislation has also been proposed in Connecticut, New Jersey, Pennsylvania, and Vermont. Both the New York state senate and assembly are currently considering wage history legislation, and the governor recently signed an executive order prohibiting state entities from evaluating prospective candidates based on prior wage history. The proposed Local Law includes a clause that voids it should the pending state bill become law to avoid any issues of preemption.

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As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act (“SEQRA”). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law ___-2018. Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends the adoption of this Local Law.

Dated: _____, 2018
White Plains, New York

COMMITTEE ON

JMN/dhc

RESOLUTION NO. ____ – 2018

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2018, entitled “A LOCAL LAW amending Section 700.03 of the Laws of Westchester County to provide that it shall, in certain circumstances, be an unlawful discriminatory practice to rely upon, request or seek the wage history of a prospective employee.” The public hearing will be held at __.m. on the ____ day of _____, 2018 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. -2018

A LOCAL LAW amending Section 700.03 of the Laws of Westchester County to provide that it shall, in certain circumstances, be an unlawful discriminatory practice to rely upon, request or seek the wage history of a prospective employee.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Section 700.03 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 700.03. - Unlawful discriminatory practices in employment.

- a. It shall be an unlawful discriminatory practice:
 1. For an employer or an employee or an agent thereof to refuse to hire or employ or bar or discharge from employment any person because of such person's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, or to discriminate against any person in compensation or in terms, conditions or privileges of employment because of such person's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking.
 2. For an employment agency or an employee or agent thereof to discriminate against a person, because of such persons actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant for its services to an employer.
 3. For a labor organization, or an employee or agent thereof, to exclude or to expel from its membership an individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer because of such individual's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, including, but not limited to, discrimination in admission to or participation in apprenticeship or other occupational training or retraining programs.
 4. For any employer, labor organization, or employment agency, or an employee or agent of an employer, labor organization or employment agency, to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to group identity or

because of such person's status as a victim of domestic violence, sexual abuse or stalking, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

5. For an employer or an employee or an agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of his or her religion which practice he or she regularly and customarily observes, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or holy day or the observance of any religious custom or usage, and the employer shall make reasonable accommodations to the religious needs of such person. Without in any way limiting the foregoing, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such person's religion, he or she regularly and customarily observes as a Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided, however, that any such absence from work shall, when requested by the employer and whenever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time. The provisions of this subparagraph shall not be construed to apply to any position dealing with health or safety where the person holding such position must be available for duty whenever needed. The provisions of this subparagraph shall not be construed to apply to any position or class of positions the nature and quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefor or holder thereof who, as a requirement of his religion, regularly or customarily observes such day or days or portion thereof as his or her Sabbath or other holy day. The provisions of this subparagraph shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer.
6. For any employer, labor organization or employment agency, or an employee or agent of an employer, labor organization or employment agency, to discharge, expel or otherwise discriminate against any person because he or she has: (i) opposed any practices forbidden under this chapter; or (ii) filed a complaint, testified or assisted in any proceeding under this chapter; or (iii) commenced a civil action against such employer, labor organization or employment agency, or employee or agent thereof, which action alleges the commission of an unlawful discriminatory practice; or (iv) participated with the commission or its members or counsel in any investigation; or (v) provided information to the commission or its members or counsel in any investigation.
7. For an employer to compel an employee who is pregnant to take a leave of absence, unless the employee is prevented by such pregnancy from performing the activities involved in the job or occupation in a reasonable manner or unless

the employer made or offered to make reasonable accommodations to the employee, which accommodations were declined by the employee.

8. For an employer, licensing agency, employment agency or labor organization to refuse to provide reasonable accommodations to the known disabilities of an employee, prospective employee or member or to a victim of domestic violence, sexual abuse or stalking in connection with a job or occupation sought or held or participation in a training program. Nothing contained in this subdivision shall be construed to require provision of accommodations which can be demonstrated to impose an undue hardship on the operation of an employer's, licensing agency's, employment agency's or labor organization's business, program or enterprise. In making such a demonstration with regard to undue hardship the factors to be considered include: (i) the overall size of the business, program or enterprise with respect to the number of employees, number and type of facilities, and size of budget; (ii) the type of operation which the business, program or enterprise is engaged in, including the composition and structure of the workforce; and (iii) the nature and cost of the accommodation needed.
9. For an employer, labor organization, employment agency or licensing agency, or employee or agent to:
 - (i) rely on the wage history of a prospective employee from any current or former employer of the individual in determining the wages for such individual; provided that an employer may rely on prior wage history when it is voluntarily provided by a prospective employee to support a wage higher than the wage offered by the employer;
 - (ii) orally, or in writing, request or require as a condition of being interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment, that a prospective employee disclose information about the employee's own wages from any current or former employer; and
 - (iii) orally, or in writing, seek from any current or former employer the previous wages of any prospective employee; provided, however, that an employer may seek to confirm prior wage information only after an offer of employment with compensation has been made to the prospective employee and the prospective employee responds to the offer by providing prior wage information to support a wage higher than offered by the employer. Under these circumstances, the employer may only seek to confirm prior wages after obtaining written authorization by the prospective employee to do so.

The employer shall not refuse to hire or otherwise retaliate against an employee or prospective employee based upon prior wage or salary history or because the employee or prospective employee has opposed any act or practice made unlawful by this subdivision.

This Section shall be null and void on the day that Statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation, or pertinent preempting State or federal regulations have been enacted for the purposes of triggering the provisions of this section.

b. The provisions of this section:

1. As applicable to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the Federal Employment Retirement Income Security Act of 1974 that is in compliance with federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act;
2. Shall not preclude the varying of insurance coverage according to an employee's age;
3. Shall not be construed to effect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision three-a of Section 296 of the Executive Law;
4. Shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purpose of this chapter; and
5. Shall not preclude any employer from making any lawful inquiry as to the alienage or citizenship status of any employee or prospective employee and shall not preclude any employer from refusing to hire or employ, or barring or discharging from employment, any person not lawfully eligible for such employment.
6. Shall protect a victim of domestic violence, sexual abuse or stalking against employment discrimination if said individual chooses to provide the employer documentation certifying his or her status as a victim of domestic violence, sexual abuse or stalking. Certification establishing such status shall be sufficient in the form of any of the following:
 - (a) A police report indicating that the employee was a victim of domestic violence, sexual abuse or stalking;
 - (b) A court order protecting the employee from the perpetrator of an act of domestic violence, sexual abuse or stalking or other evidence from the court or prosecuting attorney that the employee has appeared in court; or
 - (c) Documentation from a medical professional, domestic violence advocate, health care provider, a member of the clergy or counselor that the employee was undergoing treatment for, or seeking assistance to address, physical or mental injuries or abuse resulting from domestic violence, sexual abuse or stalking. This certification is only required to assist victims, where

appropriate, who choose to invoke the protections and benefits of the Westchester County Human Rights Law as well as to assist employers in their assessment of the situation and, if necessary, to enable them to provide reasonable accommodations. The employer shall retain all such information received from a victim of domestic violence, sexual abuse or stalking in the strictest confidence, except to the extent that such disclosure (1) is necessary to provide for a reasonable accommodation; or (2) otherwise required pursuant to applicable federal, state or local law.

7. Shall not apply to an employer or an employee or an agent thereof (1) that has been informed of the employee's status as a victim of domestic violence, sexual abuse or stalking; and (2) where such employer provides a reasonable accommodation to enable a victim of domestic violence, sexual abuse or stalking to perform the functions of his or her employment.
8. Shall not apply to an employer or an employee or an agent thereof where no adverse employment action has been taken against the individual as a result of the person's status as a victim of domestic violence, sexual abuse or stalking.
9. Shall not apply to an employer or an employee or an agent thereof if the victim of domestic violence, sexual abuse or stalking failed to provide the employer or an employee or an agent thereof with documentation certifying that he or she is a victim of domestic violence, sexual abuse or stalking, except that it shall apply if an employer or an employee or an agent thereof perceives an individual to be a victim of domestic violence, sexual abuse or stalking.

§ 2. This Local Law shall take effect _____.