



BASSFORD REMELE

DON'T SHOW ME THE MONEY!

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As Minnesotans ushered in the new year, a new law targeting pay disparity became effective. As of January 1, 2024, a new subdivision of Minnesota Statute § 363A.08 went into effect. The new subdivision bars employers from asking an applicant for their pay history and using that information to make decisions about the applicant's compensation. The law reflects the current Minnesota legislature's focus on closing the wage disparity experienced by females and people of color.

The new Minnesota Statute was incorporated into the Minnesota Human Rights Act which prohibits discrimination in many areas, including employment. It reads, in part, that:

[a]n employer, employment agency, or labor organization shall not inquire into, consider, or require disclosure from any source the pay history of an applicant for employment for the purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant.¹

This language indicates that Minnesota employers are prohibited from obtaining an applicant's pay history and using that information to determine wages, salary, earnings, benefits, or other compensation of the applicant. This prohibition applies even if the applicant's pay history is publicly available and the employer accesses the public records for the purpose of determining wages, salary, earnings, benefits, or other compensation without the applicant's knowledge or consent. However, an employer can consider voluntarily disclosed pay history.

Although Minnesota has joined the ranks of other states trying to close the pay gap, states surrounding Minnesota have yet to implement similar statutes. Employers based outside of Minnesota but employing Minnesota residents are bound by the new legislation and should take steps to ensure their hiring practices for Minnesota-based residents are compliant.

Employers should not confuse the new law with existing laws that prohibit employers from implementing rules, policies, or practices that interfere with or forbid an employee's disclosure of their wages to coworkers or others.² In short, on the one hand, employers cannot ask about wage history while on the other hand, they cannot interfere with employees discussing their wages with others.

¹ Minn. Stat. § 363A.08, subd. 8(a).

² Minn. Stat. § 181.172 and 29 U.S.C. § 157 (as interpreted by federal courts and the National Labor Relations Board).

Both sets of laws carry risks to employers who are not compliant. The Department of Human Rights investigates violations of the new pay history law whereas the Minnesota Attorney General enforces the law that protects employees who wish to discuss their wages with coworkers and others. Both laws also permit individuals to file a lawsuit if an employer violates either law and may allow the individual to recover their attorney's fees.

At Bassford Remele, we routinely keep our clients and contacts abreast of changes in the law such as the new law which prohibits pay history as well as advising employers regarding existing laws and responding to legal proceedings. If we can be of further assistance, we are here to help.

About the Author



Beth LaCanne is an attorney at Bassford Remele, P.A. She represents clients in employment matters ranging from providing advice on employee handbooks to defending employers in administrative and legal proceedings. Beth is licensed in Minnesota and Wisconsin and can be reached at blacanne@bassford.com or 612-376-1610.

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