



Policy Name:	Policy and Procedures Relating to the New York City Pay Equity Act		
Associated Form(s):	N/A	Policy Number:	2017-11
Reviewed:	Non-Academic Policy Review Advisory Council	Approved:	November 16, 2017
Approval Authority:	President <i>Tim Hall</i>	Adopted:	<i>11/22/17</i>
Responsible Executive(s):	Chief of Staff	Revised:	N/A
Responsible Office(s):	Office of Human Resources	Contact(s):	Executive Director of Human Resources

I. Background

The New York City Pay Equity law (N.Y.C. Admin. Code § 8-107(25), as part of the New York City Human Rights Law (NYCHRL), which became effective on October 31, 2017, makes it an unlawful discriminatory practice for an employer to inquire about a prospective applicant's salary history during all stages of the employment process. In addition, it is an unlawful discriminatory practice to rely on a job applicant's salary history in determining the applicant's salary, benefits or compensation.

The basis for the Act is that inquiring about pay history during the hiring process often creates a cycle of inequity and discrimination in the workplace, which perpetuates lower salaries for women and people of color. Whereas, by taking salary history information out of the job interview and application process, employers and job applicants can engage in robust salary negotiations focused on the applicant's qualifications and the requirements for the job. The New York City Commission on Human Rights is responsible for enforcing the Act. Under the New York City Human Rights law, failure to comply with the law could subject Mercy College to compensatory and punitive damages, reasonable attorneys' fees, costs, injunctive relief, and to vindicate the public interest, a civil penalty up to \$125,000, or up to \$250,000 if the conduct is willful, wanton, or malicious.

II. Applicability

While the law namely applies to New York City employees, based on an expansive interpretation by some courts of the NYCHRL, this policy is applicable to the entire College, irrespective of whether an applicant is applying for a position at our New York City or Westchester County campuses.

The restrictions under this Policy apply to Mercy College, including all employees, managers, supervisors, officers or trustees, as well as any agents, such as employment agencies the College may engage.

III. Prohibited Conduct

Under this Policy, Mercy employees are prohibited from the following:

- 1) Inquiring about the salary history of a job applicant. This includes:
 - communicating any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history; or
 - conducting a search of publicly available records or reports for the purpose of obtaining an applicant's salary history.
- 2) Relying on the salary history of a job applicant when determining his or her salary amount at any stage in the employment process, including when negotiating a contract.

"Salary history" includes the applicant's current or prior wage, benefits or other compensation. It does not include any objective measure of the applicant's productivity, such as revenue, sale, or other production reports.

IV. Exceptions to the Law

- 1) The prohibition against inquiry about previous salary does not extend to current employees applying for an internal promotion or transfer.
- 2) The College is permitted to inform the applicant in writing or otherwise about the proposed or anticipated salary or salary range for the position.
- 3) The College may engage in discussion with the applicant about its expectations with respect to salary, benefits and other compensation which includes discussion of unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer.
- 4) If the applicant makes a voluntary and unprompted disclosure of his or her salary history, the College is permitted to verify a job applicant's salary history and to consider salary history in determining a prospective employee's salary, benefits and other compensation.

Should the College's attempt to verify an applicant's non-salary-related information or conduct a background check result in disclosure of the applicant's salary history, however, the College is prohibited from relying on the salary information during the hiring process and contract negotiation stages when setting the salary, benefits, or other compensation of the applicant.

V. Policy Implementation

The Office of Human Resources, in coordination with the General Counsel's Office, is responsible for ensuring that all relevant staff, such as those involved in the recruiting and hiring process, are educated and familiar with this Policy quarterly. Trainings shall include ways to avoid claims that salary history was disclosed involuntarily or at the prompting of the interviewer, as well as the documentation process for when an applicant voluntarily discloses salary history and other compensation information.