



Policy Name:	Policy and Procedures Relating to the New York City and New York State Laws Barring Inquiries into the Wage and Salary Histories of Applicants and Current Employees		
Associated Form(s):	N/A	Policy Number:	2020-1
Reviewed:	Non-Academic Policy Committee	Approved:	March 2, 2020
Approval Authority:	President <i>Timothy L. Hall</i>	Adopted:	April 11, 2020
Responsible Executive(s):	Vice President of Finance	Revised:	Replaces <i>Policy and Procedures Relating to NYC Pay Equity Act</i> , November 2017
Responsible Office(s):	Office of Human Resources	Contact(s):	Director of Human Resources

I. Background

This Policy complies with New York City and New York State laws barring inquiries into the wage and salary histories of applicants and current employees. These laws were enacted to prevent wage discrimination against women and minorities by prohibiting employers from asking about wage and salary histories. By taking salary history information out of the job interview and application process, salary negotiations can be focused on an individual's qualifications and the requirements for the job. Failure to comply with the applicable laws could subject Mercy University (the "University") to compensatory and punitive damages, reasonable attorneys' fees, costs, injunctive relief, and a civil penalty.

II. Definition and Applicability

"Salary history" generally 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. Part-time and temporary employees and applicants are covered by the New York State law as well.

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

III. Prohibited Conduct Related to Applicants and Current Employees

In accordance with these laws, the University or any of its employees, managers, supervisors, officers or trustees, as well as any agent of the University are prohibited from the following:

- A. Relying on the wage or salary history of an applicant in determining whether to offer employment to that individual (including for current Mercy employees applying for another position internally);
- B. Relying on the wage or salary history of an applicant in determining the wages or salary for that individual (except for current Mercy employees applying for another position internally);
- C. Requesting or requiring, either orally or in writing, the wage or salary history from an applicant or current employee as a condition of being interviewed or considered for an offer of employment, or as a condition of employment or promotion, unless the information is required pursuant to federal, state, or local law;

- D. Seeking, requesting, or requiring the wage or salary history of an applicant or current employee either orally or in writing, from:
1. a current or former employer;
 2. a current or former employee of the applicant's current or former employer;
 3. a current or former employee of the current employee's current or former employer;
 4. an agent (for example, a recruiter) of the applicant's current or former employer; or
 5. an agent (for example, a recruiter) of the current employee's current or former employer;
- E. Refusing to interview, hire, promote, otherwise employ, or otherwise retaliating against an applicant or current employee
1. based on prior wage or salary history;
 2. because the individual did not provide wage or salary history in accordance with the law; or
 3. because the individual filed a complaint with New York State Department of Labor or any other protected reporting procedure alleging a violation of the law on wage and salary history inquiries.
- F. Conducting a search of publicly available records or reports for the purpose of obtaining an applicant's salary history.
- G. Exceptions to the Law
1. The University is permitted to inform the applicant in writing or otherwise about the proposed or anticipated salary or salary range for the position.
 - a. The University may engage in discussion with the applicant about its expectations with respect to salary, benefits and other compensation.
 - b. Applicants or current employees may voluntarily and without prompting disclose or verify their salary history, including for the purpose of negotiating wages or salary (though the University may not add salary history as a question on its employment application, even as optional).
 - c. Employers can confirm salary history **only** if at the time an offer of employment with compensation is made, the applicant or current employee responds to the offer by providing prior salary history to support a salary higher than that offered by the employer.

- d. The New York State law does not diminish any rights or privileges enjoyed by employees under another law or regulation, a collective bargaining agreement or an employment contract, nor does it affect any laws that otherwise require the disclosure or verification of salary history information.
- e. Should the University'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 University 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.
- f. The New York State law does not supersede any law enacted prior to its effective date that requires the disclosure or verification of salary history information to determine an employee's compensation. If you believe such a law is applicable to a hiring situation, you must contact the Office of Human Resources to obtain permission before taking any further action.

H. 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.