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## **RLG HANDOUT: MINNESOTA SALARY/PAY HISTORY BAN SCENARIOS**

Effective January 1, 2024, under the Minnesota Human Rights Act, employers are prohibited from asking about or considering an applicant's past or current pay during the hiring process. We have put together the below scenarios to illustrate what employers can and cannot do with respect to asking about an applicant's pay history under this new law.

### **Scenario #1**

**QUESTION: Can an employer ask an applicant their hourly wage or previous pay on a job application?**

**ANSWER:** No, an employer cannot ask about past or current pay during any part of the hiring process. Under the Minnesota Human Rights Act, an employer cannot ask, encourage, or prompt an applicant to disclose their pay history for the purpose of negotiating wages, salary, benefits, or other compensation. Since this job application is used as part of a hiring process, which includes determining wages, employers must remove the part of the application that asks the applicant to disclose their pay history. Employers should also review interview questions and remove any questions that ask what someone's previous or current salary or wages.

### **Scenario #2**

**QUESTION: Can an employer ask an applicant about pay history as part of a job application (or interview) as long as it is *optional* for the applicant to provide that information?**

**ANSWER:** No. An employer cannot ask about pay history or prompt an applicant to disclose their pay history. Asking about past wages, even if optional, is prohibited.

### **Scenario #3**

**QUESTION: Can an employer ask an applicant about their *desired* salary range?**

**ANSWER:** Yes. An employer can ask an applicant about their expectations for wages, salary, benefits, or other compensation. This means, for instance, that an employer may include a question on an application, in an interview, or as part of negotiations, about the salary range an applicant expects to be paid if they are selected for the job.

#### **Scenario #4**

**QUESTION: If an applicant voluntarily discloses their current salary to their prospective employer (without prompting from the employer), would the employer violate the Minnesota Human Rights Act if the Hiring Manager uses the applicant's current salary to offer them \$28.00/hour so the applicant accepts the position?**

**ANSWER:** No. The employer would not violate the Minnesota Human Rights Act. Under the Minnesota Human Rights Act, if an applicant voluntarily discloses pay history for the purposes of negotiating wages to a perspective employer, the employer can consider and act on that voluntarily disclosed salary history information to support a wage or salary higher than initially offered.

#### **Scenario #5**

**QUESTION: If the employer is located outside of Minnesota, is it allowed to ask and consider current and past pay when making an offer to an applicant located in Minnesota?**

**ANSWER:** Probably not. When it comes to remote work, employees are generally protected by the laws of the state in which they reside. Therefore, under the Minnesota Human Rights Act, the employer in this situation cannot consider the pay history of an applicant when determining wages, salary, earning, benefits, or other compensation.

However, with remote work, there can be very specific facts that can result in different outcomes with regards to which state employment laws control. If the employer wants to employ someone who lives or works in a different state, the employer should speak to their attorney to review the specific facts for its remote scenario.

#### **Scenario #6**

**QUESTION: Is a company allowed to ask a contractor about what they were paid for previous contracts?**

**ANSWER:** Yes. The hiring manager can ask a contractor what they are paid for their contracts. Generally, independent contractors aren't considered employees under the Minnesota Human Rights Act (with the exception of commission salespersons). However, please note that independent contractors may have other claims for discrimination under the business discrimination provision of the Minnesota Human Rights Act.