

Asking for Salary History May Be Illegal In Your State

California recently banned employers from asking salary history questions

On October 12, 2017, California enacted a law that prohibits employers from requesting (either orally or in writing) job applicants' salary history, including both compensation and benefits. The new law further requires California employers to provide job applicants, upon request, with the pay scale for the position sought.

While California employers may not ask job applicants about their salary history under the new law, job applicants may voluntarily provide this information to a prospective employer. If an applicant volunteers his or her salary history information to a prospective employer, the prospective employer may lawfully consider or rely on the voluntarily disclosed information to determine the salary it will offer the job applicant. However, consistent with California's other laws, an individual's salary history, by itself, may not be used to justify any disparity in compensation.

This law will become effective on January 1, 2018, and will apply to all employers in California, including state and municipal employers and the state legislature.

States and municipalities prohibiting salary history questions

Significantly, other states and municipalities have enacted similar laws prohibiting employer inquiries into job applicants' salary histories:

- Delaware (will become effective December 14, 2017)
- Massachusetts (will become effective July 1, 2018)
- Oregon (became effective October 6, 2017)
- New Orleans (became effective January 25, 2017)
- New York City (will become effective October 31, 2017)

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- San Francisco (will become effective July 1, 2018)

Philadelphia also enacted a law prohibiting employer inquiries into job applicants' salary histories, but its planned May 23, 2017 effective date has been stayed due to pending legislation challenging the law.

Questions about previous salary has perpetuated the underpayment of minorities

The growing number of states and municipalities enacting laws prohibiting salary history inquiries indicates that this may be a trend that other states and municipalities may follow. The goal of such laws has largely been to combat pay disparities that affect women and other minorities. These pay disparities are often perpetuated by the practice of basing compensation on the applicant's previous salaries, which may have been negatively impacted by their minority status.

Steps employers should take

In light of these laws, which may now or will soon be in effect, employers with operations in states and municipalities that have enacted a ban on salary history inquiries should review and revise their employment applications to remove any questions that may ask an applicant to provide his or her previous or current salary or benefits. These employers should also train their human resources and other interview team personnel to ensure that they will not ask questions about an applicant's salary history during the application and interview process.

Employers that do not currently operate in states or municipalities affected by these laws should nonetheless be cognizant of any similar legal developments or proposals in the states and municipalities where they are located.

Questions about the laws?

If you have any questions about laws prohibiting employer inquiries into job applicants' salary histories, or would like to have your employment applications and/or interview materials revised, please contact your Reinhart attorney.

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