

UPDATED: California Bans Applicant Salary History Inquiries

Labor & Employment Law Update

on November 8, 2017

Add salary history to the growing list of topics that may be off limits on employment applications and during interviews, depending on where your business operates.

California joins a growing list of jurisdictions banning salary history inquiries. On October 12, 2017, California Governor Brown signed Assembly Bill 168, which prohibits employers from seeking or relying upon applicants' salary history and using such information as the basis for establishing compensation. The new law takes effect on January 1, 2018.

Like ban-the-box legislation (banning inquiries into criminal conviction history) and sick leave ordinances, this is likely the start of a national trend enacted on a jurisdiction-by-jurisdiction piecemeal basis. **California** joins **Massachusetts, Oregon, and Delaware**, along with several municipalities, such as **New York City, Philadelphia, Pittsburgh**, and U.S. territory **Puerto Rico**, to enact such legislation in an emerging national trend. Indeed, since we reported on Illinois's forestalled HB1462 amending the Equal Pay Act in September, the Illinois House has overridden the governor's veto, and the bill is on its way to the Illinois Senate for similar consideration.

The Basics

Like the other jurisdictions' laws, California's legislation is meant to remedy past gender-based compensation discrimination. However, given the broad language, this bill will apply to all protected classes such as (and not limited to) race, religion, military status. Under AB-168, all employers in the state of California:

1. May not inquire directly or indirectly into an applicant's compensation and benefits (unless publicly available as provided by other laws).
2. May not rely on salary history as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.
3. Must provide the pay scale for the position to an applicant applying for employment "upon reasonable request." Note that this is a fairly unique provision in California's law (at least for now).

4. May not allow prior salary alone to justify any disparity in compensation.

Notably, if an applicant “voluntarily and without prompting discloses” compensation history, the employer may then consider it as a factor in determining the salary to offer an applicant.

Compliance Made Easy

In light of these trends in the workplace, employers must ensure that they are compliant with new and emerging laws as enacted, and to also perform routine audits – including employment forms, handbooks, policies, and templates. As it relates to these salary inquiry laws, employers should (1) ensure job applications are compliant and do not include salary/wage inquiries, and (2) review interview questions, especially “scripts” used by management, and ensure that those conducting interviews are aware of the new unlawful inquiry.

What's the Bottom Line on Salary History Inquiry Bans? Don't Ask.

You may not ask applicants “how much do you currently make?” But you may ask: “how much would you like to earn in this position?” or “What are your compensation expectations?” or other similar future-oriented inquiries.

UPDATED:
California
Bans
Applicant
Salary
History Inq-
uiries