

California Becomes 4th State to Ban Salary Inquiries

On October 12, California Governor Jerry Brown signed into law a bill that prohibits both public and private employers from seeking, considering or relying on a job applicant's salary history information during the hiring process. California joins Delaware, Massachusetts and Oregon in enacting statewide restrictions on salary history inquiries. Employers should make any needed changes to their employment applications and hiring practices to ensure compliance when the new law takes effect on January 1, 2018.

Background

Last year, Massachusetts became the first state to pass a law restricting salary history inquiries by private employers. (See our [August 3, 2016 FYI Alert](#).) Since then, Oregon and Delaware have adopted similar statewide limitations on employers' salary history inquiries. (See our [June 21, 2017](#) and [June 15, 2017](#) issues of *For Your Information*.) Comparable measures were passed by the [Illinois](#) and [New Jersey](#) legislatures, but both of those bills met with a governor's veto.

Last summer, San Francisco became the third major city in the nation seeking to close the gender pay gap by curbing salary history inquiries by employers, with the new restrictions taking effect next year. (See our [July 25, 2017 For Your Information](#).) New York City and Philadelphia have passed similar laws. While New York is poised to bar inquiries as of October 31, Philadelphia's law is on hold due to legal challenge. (See our [October 20, 2017](#) and [June 19, 2017 For Your Information](#) publications.)

New Statewide Restrictions

On October 12, California Governor Jerry Brown signed into law a [bill](#) that amends the California Labor Code to prohibit both public and private employers from seeking, considering or relying on a job applicant's salary history information during the hiring process. Effective January 1, 2018, the law generally will prohibit employers from:



- Seeking – personally or through agents such as headhunters and recruiters – an applicant’s salary history information (including compensation and benefits) in writing or orally
- Relying on salary history in making hiring decisions or formulating a job offer

Comment. Two earlier attempts by the California legislature to ban employers from asking applicants about their compensation history failed to become law. In October 2015, Governor Brown vetoed [AB 1017](#), which would have prohibited employers from seeking an applicant’s salary history information. A similar provision was removed from [AB 1676](#) – a bill that amended California’s Fair Pay Act to prohibit employers from using prior salary as the sole basis to justify a pay disparity – to avoid a possible veto last year. (See our [October 7, 2016 For Your Information.](#))

Like NYC, California will not apply its salary history ban to existing employees, or to salary history information that is disclosable to the public pursuant to federal and state laws, such as the California Public Records Act and the federal Freedom of Information Act. The law also provides a narrow exception from the new restrictions if an applicant voluntarily and without prompting discloses salary history information to a prospective employer. While employers may consider or rely on the volunteered information in determining an applicant’s salary, the state’s equal pay law prohibits them from justifying any disparity in compensation based on prior salary alone.

Unlike NYC’s law, California’s new law does not expressly allow employers to ask applicants about their expectations with respect to salary, benefits and other compensation, or discuss deferred compensation or unvested equity that they may forfeit or have cancelled by switching jobs. Hopefully, the state will issue guidance before the new law goes into effect that clarifies whether such discussions would be permissible and addresses other issues that may be of concern to California employers.

In addition to curbing requests and use of salary history information, California’s new law will require employers to provide the pay scale for a position upon the applicant’s “reasonable request.” However, it does not provide guidance on what would constitute such a request.

Comment. To both facilitate pay scale disclosures and to avoid potential liability under this and state fair pay laws, employers that have not already done so may want to consider establishing salary guidelines, pay grades or bands for each position based on nondiscriminatory factors.

Although the law clarifies that the penalties in California Labor Code Section 433 will not apply, it does not specify the penalties for violation.

In Closing

California joins Delaware, Massachusetts and Oregon in prohibiting salary history inquiries during the hiring process. Employers should update their employment applications and pre-hire practices to ensure compliance when the new law takes effect on January 1, 2018.

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Produced by the Knowledge Resource Center of Conduent Human Resource Services

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