



e-Alert: New California Law Bans Salary History Inquiries

About the law

Starting January 1, 2018, California employers cannot ask job applicants for their salary history, based on a new law that continues the expansion of equal pay protection. California joins a growing list of cities and states trying to combat the gender pay gap by focusing on the value of a particular position rather than the value of the individual based on his or her prior compensation. The law applies to both public and private employers.

What employers need to know

The law prohibits employers, either personally or through an agent, such as an outside recruiter, from asking job applicants about their salary or wage history including bonuses and benefits. Under this new law, employers are not prohibited from contacting a job applicant's previous employer to verify an applicant's prior salary after a job offer has been made. However, there are certain jurisdictions in California, such as San Francisco, where employers may not disclose the salary history of any current or former employee to a prospective employer, without written authorization from the employee.

Job applicants can voluntarily and without prompting, disclose their salary history and if they do disclose their current or prior salary, an employer cannot use this information to determine whether to hire the applicant. However, an employer may use the salary information that was voluntarily disclosed when deciding an applicant's starting salary. At the same time, employers should be aware that if they choose to base someone's salary on what the applicant had voluntarily disclosed, the California Fair Pay Act prohibits them from relying on this information by itself to justify any gender, ethnicity, or race-based pay disparities.

In addition to banning salary history inquiries, employers are required to provide any job applicant, upon "reasonable" request, with a "pay scale" for the position they are applying for. The law does not specifically define what is considered "reasonable" or what a "pay scale" is; therefore, employers can determine how best to comply with this new disclosure requirement.

Next steps for employers

1. Review your employment applications and pre-employment inquiries to ensure your organization no longer requires or asks about salary history.
2. Review your background check forms and phone screen and interview materials to eliminate any questions about salary history.
3. Make sure your hiring managers are trained to not ask questions about salary history.
4. Multistate employers should be aware of this new law as similar laws are gaining momentum in other jurisdictions. Similar legislation already took effect in New York on October 31, 2017, and will take effect on July 1, 2018, in Massachusetts. Twelve other states currently have bills pending.
5. If you are one of our full-service clients, we'll help you review your employment application and provide you with some sample interview questions to ensure that you will be compliant with these new regulations. If you have any questions about how this new law affects your business, please [contact us](#).



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