

Dear HR Knowledge: What's the deal with all these salary history bans?

During a job interview, the question usually comes up: “What is your current salary?” This has always been a standard part of the recruiting process. Employers use salary history information to weed out candidates that are too expensive and to build compensation packages. How else would you know if your starting pay is on par with what your candidate is expecting?

This practice will have to change beginning July 1, 2018, when the Massachusetts Equal Pay Act (MEPA) – which makes it unlawful for employers to pay men and women different rates for comparable work –takes effect. Until a formal offer of employment has been made with compensation terms included, the salary history question will be a no-go for Massachusetts employers.

To rectify pay inequity and end the perpetuation of gender-based wage discrimination, an ever-growing number of states and local jurisdictions including California, New York City, Delaware, Oregon, San Francisco, New Jersey, and Philadelphia have legislation enacted or pending. Each of these cities or states has its own variation of the law, so it is not a one-size fits all approach.

The new Massachusetts law coming down the pike prohibits employers from asking applicants to reveal wage/salary history and from seeking the applicant’s wage/salary history from a current or former employer. In addition, as an extension to the protections provided by the National Labor Relations Act (NLRA), the MA law also protects an employee’s right to discuss his or her own wages with coworkers. An employer may not, either verbally or in writing, forbid employees from discussing their wages or retaliate against employees who do so.

So how do we determine pay? Some companies are taking proactive measures to analyze their compensation practices and ensure they are equipped with up-to-date information on the market rates of their vacant positions, as well as the variable compensable factors that might affect the rate of pay, such as location and difficult to find skill sets. Under the new MA law, it is permissible to take into account certain characteristics of an employee or applicant when determining variations in pay, such as their work experience, education, skill, or measurements of sales or production that influence the company revenue.

What if the candidate discloses their prior salary voluntarily? This is a gray area and can be a slippery slope when discussing compensation and benefits in the interview process. If candidates voluntarily communicate their current or past salary, it is best to focus the conversation on what their salary expectations are moving forward rather than focusing on what they were making in the past.

What can we ask? Employers can still ask candidates about their compensation expectations or a range of pay but must stay away from mentioning an applicant's current salary or salary history. Instead, interviewers should prepare a fixed set of job-related questions and talking points to drive the conversation.

Next steps:

As state pay equity laws and provisions on banning salary history questions continue to gain ground, employers will need to plan prudently to avoid legal challenges.

- Remove any questions surrounding pay history from your job application and hiring process and ensure that any recruiters and background screening vendors you are working with have done the same.
- Train managers involved in the interview process on lawful hiring practices and ways to avoid salary history questions.
- Identify any current pay disparity risks within your organization by conducting an audit of pay practices.
- Create a compensation structure that will take the guesswork out of determining pay during the hiring process.
- Refrain from releasing salary information for past employees without specific written authorization from the employee.
- Contact us to conduct or assist with a pay practice audit to ensure your company is in compliance with the new law. Please [email us](#) and an HR advisor will be happy to help.

About HR Knowledge

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