



RECENT DEVELOPMENT

New California Law Prohibits Salary History Inquiries

BY BRUCE SARCHET ON OCTOBER 13, 2017

On October 12, 2017, Governor Jerry Brown of California signed into law a state-wide ban on employer inquiries into an individual's salary history. The new law ([AB 168](#)) will apply to all employers, including state and local governments, and will take effect on January 1, 2018.

The new law continues the expansion of equal pay protection in California. California's Equal Pay law has been on the books since 1949, requiring equal pay, regardless of gender, for equal work. It remained largely unchanged until 2016, when it was amended to require equal pay for "substantially similar" work. In addition, the 2016 revision prohibited employers from using prior salary to justify a current disparity in compensation. AB 168 imposes further restrictions and requirements regarding the salary history information of a job applicant.

Under AB 168, no employer may rely on an applicant's prior salary history "as a factor in determining whether to offer employment . . . or what salary to offer an applicant." Salary history information includes both an individual's rate of compensation as well as other benefits. Moreover, an employer cannot—orally or in writing, directly or indirectly—seek this type of information about an applicant. Accordingly, employers and their agents can no longer ask candidates, or their current or former employers, what candidates have earned in the past. An employer must, upon reasonable request, provide an applicant with the pay scale assigned to the position sought.

There are certain exceptions to the salary history restriction. First, employers may review and consider salary history information that is publicly available pursuant to federal or state law. Second, salary history may be discussed if an applicant "voluntarily and without prompting" discloses his or her history to a potential employer. In that event, the employer may consider and rely on that history in setting that applicant's salary.

In light of the new law, employers with operations in California may need to revisit their recruitment processes, including applications, and retrain hiring personnel, to prepare for compliance. Employers also should bear in mind that, even where consideration of salary history is permissible, prior salary cannot, by itself, justify a disparity in compensation between workers of the opposite sex who are performing substantially similar work.¹

With AB 168, California joins the growing list of jurisdictions across the country that have prohibited salary history inquiries. A similar, though arguably more comprehensive, ordinance was passed in San Francisco and will become operative on July 1, 2018.² A New York City salary history ban takes effect in a few weeks, on October 31, 2017, and imposes severe penalties for violations.³ Delaware and Oregon have also passed salary history laws.⁴ The rationale underlying these laws is that pay inequities are perpetuated when current pay is based on past employer decisions that could have been discriminatory. To combat this problem, these measures seek to narrow the pay gap between men and women by emphasizing the value of a particular position rather than the value of an individual as based on his or her prior earnings.

¹ See Cal. Lab. Code § 1197.5(a)(3).

² Bruce Sarchet & Corinn Jackson, *Another San Francisco Treat: Mayor Lee Signs Salary History Ban*, [Littler ASAP](#) (July 20, 2017).

³ María Cáceres-Boneau, Jean Schmidt & David M. Wirtz, *New York City Set to Ban Inquiries About Salary History*, [Littler ASAP](#) (Apr. 14, 2017).

⁴ Joon Hwang, *Delaware Enacts Law to Address Gender Pay Gap By Prohibiting Employers From Requesting Compensation History of Job Applicants*, [Littler ASAP](#) (June 19, 2017); Cody Emily Schvaneveldt, *Oregon Enacts New Equal Pay Law that Includes Salary History Inquiry Restrictions*, [Littler ASAP](#) (June 1, 2017). An ordinance was also passed in Philadelphia, Pennsylvania, but is currently on hold pending the outcome of litigation challenging the law. See Martha Keon, *The City of Philadelphia Has Agreed To Stay The Enforcement of The Philadelphia Wage Equity Ordinance Pending Resolution of Court Challenge*, [Littler ASAP](#) (Apr. 20, 2017).

Information contained in this publication is intended for informational purposes only and does not constitute legal advice or opinion, nor is it a substitute for the professional judgment of an attorney.