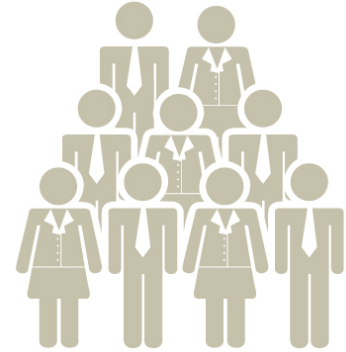


Labor and Employment Alert

October 16, 2017

Key Points

- New California law prohibits employers from seeking or relying on applicants' salary history information when making hiring and compensation decisions.
- The law also requires an employer to provide the pay scale for a position upon request by an applicant.
- Employers should review their application materials and hiring practices to ensure compliance before January 1, 2018.



New California Law Prohibits Inquiries Regarding Applicants' Salary History

On October 12, 2017, Governor Jerry Brown signed a new law that will prohibit all California employers from relying on or inquiring about an applicant's salary history in making hiring or compensation decisions. Intended to combat wage disparities experienced by women in the workforce, the law will take effect on January 1, 2018.

Specifically, the new law (A.B. 168) prohibits employers from relying on the salary information of an applicant as a factor in determining whether to offer employment or what salary to offer, or whether to seek (orally or in writing, personally or through an agent) salary history information (including compensation and benefits) about an applicant. Further, upon reasonable request, an employer must provide the pay scale for a position to an applicant. The law reiterates that, consistent with existing California law, prior salary, by itself, does not justify any disparity in compensation.

The law does not prohibit an applicant from disclosing salary history information voluntarily and without prompting, and an employer may consider such voluntarily provided information in determining the salary for the applicant. The law also does not apply to salary history information disclosable to the public pursuant to federal or state law (such as the Freedom of Information Act).

In enacting A.B. 168, California joins San Francisco, New York City, Philadelphia, Delaware, Massachusetts, Oregon and Puerto Rico, which have already passed similar laws.

One uncertainty in the law is the scope of the "pay scale" required to be provided upon request. The law does not define the term or provide further explanation about the information to be provided. Some employers may not have established pay scales for certain positions, and in that circumstance it is unclear what must be provided. The employer may be required to provide, for example, the highest and

lowest salaries paid to employees in the same position. Also unclear is the extent to which the employer may limit the pay scale to the same geographic region as the applicant. For example, employers may have separate pay ranges in Northern and Southern California due to cost of living differences.

In light of these new restrictions and obligations, employers should take steps before the end of the year to ensure compliance. At a minimum, employers should review their application materials and make necessary changes to ensure they do not seek information about salary history, and train their recruiters, human resources personnel, managers and anyone else with hiring responsibility on the new restrictions. Likewise, employers should avoid obtaining salary information from third parties, such as when verifying prior employment, even inadvertently.

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