

Hedge Up Alert

June 11, 2018

Key Points

- Connecticut has passed a law barring firms from asking job candidates about their compensation history.
- The law mirrors legislation recently enacted in New York City, California, and elsewhere.
- The law goes into effect January 1, 2019.



Connecticut Is Latest State to Ban Inquiries Regarding Applicants' Compensation History

Late last month, Connecticut Governor Dannel Malloy signed “An Act Concerning Pay Equity,” prohibiting Connecticut-based firms from inquiring about a prospective employee’s salary or compensation history. The law, which mirrors legislation recently enacted in New York City, California, and several other jurisdictions, goes into effect on January 1, 2019. As with the laws passed elsewhere, the Connecticut law is intended to help break a perceived cycle in which pay disparities impacting women and minorities at one employer tend to carry over to the employees’ next jobs.

The key features of the new law are as follows:

- The law makes it an unlawful discriminatory practice for a firm, or an agent thereof, to inquire about an applicant’s compensation history, including his or her prior salary, benefits, or other compensation.
- Like the New York City salary history law, the Connecticut law contains several exceptions:
 - If a candidate “voluntarily” discloses his or her compensation history, the hiring firm may inquire further regarding it.
 - Firms also may inquire about compensation history if a state or federal law requires or specifically authorizes it to verify such information.
- A firm also may inquire into the *components* of a candidate’s compensation structure, presumably including whether the employee received equity, profit participation, deferred compensation, etc., so long as the firm does not inquire as to the *value* of such compensation.
- The law does not appear to prohibit firms from informing candidates about the proposed or anticipated compensation range of the position at issue.

- The law also does not appear to prohibit firms from engaging in discussions with prospective employees regarding their expectations with respect to compensation.
- Among the potential remedies for violations of the law are compensatory damages, attorney's fees and costs, equitable relief, and punitive damages.

What Firms Should Do Now

The Connecticut law is sparser than its New York City counterpart, and its precise contours will need to be defined through regulatory guidance and/or case law. For now, Connecticut-based firms should take the following steps:

- As January 1, 2019 approaches, firms should educate their employees regarding the new law, including directing those who interview or come into contact with candidates not to request the candidates' pay history.
- Be cognizant of the broader context of the law, and the increasing focus on statistical pay disparities between white males, on the one hand, and women and minorities, on the other hand, as well as on the heightened risk of litigation involving such matters.
- Consider using their next annual compensation cycle to conduct a privileged review of their compensation structure to ensure that any disparities are justified by valid business considerations. Such a review should be conducted under the guidance of counsel, to ensure its privileged nature.

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