

Insights: Alerts

California Enacts Law Barring Pre-Employment Inquiries About Salary History

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On October 12, 2017, Governor Jerry Brown of California signed into law a statute that prohibits employers from seeking salary-history information, including compensation and benefits information, about an applicant for employment. This prohibition applies both to salary-history inquiries made directly by an employer and to such inquiries made by an agent acting on behalf of an employer. The new statute, which applies to all employers in California, also prohibits employers from relying in whole or in part on salary-history information about an applicant in determining whether to offer employment to the applicant or what salary will be offered to the applicant. However, if an applicant voluntarily and without prompting discloses salary-history information to a prospective employer, the employer may take that information into consideration in determining the salary to be offered to the applicant. The statute further requires employers to disclose the pay scale for a position to an applicant who makes a reasonable request for that information. The new statute will go into effect on January 1, 2018.

With the enactment of this law, California joins Delaware, Massachusetts, Oregon, and Puerto Rico in barring or restricting pre-employment inquiries about salary history. Several municipalities, including New York City and San Francisco, have also adopted such laws. The theory behind these laws is that basing the amount of salary that will be offered to a new hire on the individual's past compensation tends to perpetuate discriminatory pay rates, particularly with respect to women.

Employers in jurisdictions with laws restricting salary-history inquiries should eliminate questions about compensation on past jobs from employment applications and should train managers, supervisors, and other employees who may participate in applicant interviews to avoid asking about or encouraging applicants to disclose compensation on past jobs.

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