

Employment Law Q&A: Can you request a candidate's salary history?



Ryan Neumeyer | Friday, November 10, 2017

Q. Can I request a candidate's salary history?

A. In most states the answer is "yes." However, concerns about equal pay issues between men and women have led some jurisdictions to pass laws that prevent employers from requesting historic wage information so as to not perpetuate such pay disparities. California recently became the fourth state to prohibit employers from requesting salary history information. The California law, which will go into effect on Jan. 18, 2018, will prohibit employers from:

- Relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant.
- Seeking salary history information about an applicant for employment.

The law will also require the employer to provide the pay scale for a position to an applicant for employment. However, if an applicant voluntarily and without prompting discloses his or her salary history information to a prospective employer, that employer may then consider and/or rely on that voluntarily disclosed salary history information in determining the salary for that applicant. An employer may not rely on such disclosure to justify gender salary disparity.

Delaware, Massachusetts, and Oregon have enacted similar state laws. San Francisco, New York City and Philadelphia have passed similar local ordinances.

Employers who hire in these states and locales must review their applications and other hiring forms to ensure that such documents do not request salary history. Also, in those states, employers must train hiring staff not to request such information. Under these laws, employers are generally permitted to ask applicants about salary expectations, but should be careful to not do so in a way that also inquires into an applicant's salary history.

Outside of jurisdictions with these salary history prohibitions, employers must still be aware that federal law prohibits discrimination based on sex in the payment of wages. For that reason, establishing gender-neutral compensation guidelines is an important aspect of equal pay compliance.



Ryan Neumeyer

