



News & Types: Employment, Labor & Benefits Update

Salary History Inquiry is a Thing of the Past in California

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Practices: Employment, Labor & Benefits

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EXECUTIVE SUMMARY

California's newly added Labor Code section 432.3, which became effective as of January 1, 2018, prohibits employers from inquiring about an employment applicant's salary history information as part of the hiring process. This rule applies to both oral and written inquiries either directly or indirectly through an agent, and includes information concerning salary as well as benefits.

It is customary for employers to ask a job applicant about his or her past salary as a guideline in deciding how much compensation to offer that particular applicant. However, that is now a thing of the past in California. In addition to the California Equal Pay Act, California enacted a new statute in 2017 (AB 168, codified as Labor Code section 432.3) which prohibits California employers from seeking a job applicant's past salary or benefits information. This prohibition will also ban employers from making salary inquiries through a recruiting company when searching for applicants.

In addition to the above, the employer must provide the applicant a pay scale for the relevant position when and if requested by the applicant. However, while the new statute's underlying purpose is to prohibit employers from relying on the applicant's past salary information in determining the applicant's starting salary, if an applicant voluntarily discloses his or her salary history, the law does not prohibit an employer from relying on such information in determining the initial salary for that applicant.

Labor Code section 432.3 further provides that this new prohibition on salary inquiries must be followed consistently with the California Equal Pay Act (Labor Code section 1197.5, last amended in 2017) which prohibits salary disparity based on gender, race, or national origin.

Private companies doing business in a state or states outside California should be aware that there are currently similar laws in the following states and cities (list does not include states or cities that have similar laws regulating only the public sectors): San Francisco (CA), Delaware, Massachusetts, New Jersey, New York City (NY), Albany County (NY), Westchester County (NY), Oregon, Puerto Rico, and Vermont.

Action Steps: For the time being, California employers will simply need to do the following: (1) remove any salary-related questions from employment applications; and (2) do not ask any salary-related questions during interviews.