

New Salary History Bans Change Hiring Practices



Patricia W. Goodson

May 4, 2018



Subscribe to News and Insights

Via RSS

Via Email

This article was originally published in the Geneva Group International (GGI) Labour Law Practice Spring 2018 Newsletter. It has been republished here with permission.

Over the past year, numerous state and local governments across the U.S. have enacted salary history bans. Generally, these laws ban employers and recruiters from asking an applicant about their current or past salary, which may include bonuses and benefits and other types of pay. The aim of the salary history ban is pay equity: to eliminate the wage gap for women and minorities. Some states have reasoned that when employers ask prospective employees for their salary history, it perpetuates disparities in pay from job to job.

For example, California, Delaware, Massachusetts, Oregon, Puerto Rico, New York City, San Francisco, and Albany County New York have all enacted salary history bans. Even more state and local governments have similar legislature pending. This rapid and widespread adoption indicates that laws prohibiting inquiries into an applicant's previous pay will likely be implemented throughout the U.S. The terms of the salary bans vary from jurisdiction to jurisdiction, thus employers need to be familiar with the laws in all jurisdictions.

The consequences for violating these laws indicate that the U.S. is taking pay equity seriously. For example, in New York City, a civil penalty of up to 125,000 USD for any violation, or up to 250,000 USD for a wilful violation, may be imposed in addition to tort damages and injunctive relief. Philadelphia's law, currently stayed, even includes jail time for repeated violations.

While these laws have major implications for compensation negotiations, employers still have access to multiple tools to create a reasonable salary package. For example, employers may still ask applicants about their salary expectations and may use market data to determine whether an applicant's salary expectation is reasonable. In addition, most of the salary history bans do not prohibit an applicant from voluntarily disclosing their previous salary. However, jurisdictions vary on whether an employer can rely on voluntary disclosures to determine the applicant's pay.

In light of these laws, organizations hiring or recruiting employees in or from the U.S. must revisit their hiring and compensation practices. Organizations should be familiar with the laws in the jurisdictions where they are recruiting and hiring to ensure compliance with this fast-growing trend.