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Employment Law Forum

Asking About Past Salary

Effective January 1, 2018, the State of California will ban an employer from inquiries into an individual's salary history.ⁱ The new law will apply to all employers, including state and local government. California joins a growing list of jurisdictions across the country that have prohibited salary history inquiries including the states of Delaware, Massachusetts, and Oregon. Legislation has been introduced in other states including Texas, Florida, Montana, Virginia, and Wisconsin. In addition, more than 200 cities have either adopted or are considering similar legislation including New York City, Philadelphia, and San Francisco.

The primary purpose of eliminating an individual's past salary on job applications is to prevent gender discrimination from being passed from one workplace to another by basing an employee's pay on his or her past salary. In 2015 women working full-time earned \$.805 cents for every dollar earned by a man.ⁱⁱ

California and other states have equal pay laws based on the principle that an employee is entitled to equal pay for equal work without regard to gender.ⁱⁱⁱ However, these laws do not prohibit employers from requiring an employee's current or past salary on application forms. Some online applications cannot be submitted until a prior salary is listed.

The specific provisions of Labor Code Section 432.3 follow:

- (a) An employer shall not rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.
- (b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information including compensation and benefits, about an applicant for employment.
- (c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment.
- (d) Section 433 does not apply to this section.
- (e) This section shall not apply to salary history information disclosable to the public pursuant to state law, including the California Records Act (Chapter 3.5{commencing

- with Section 6250} of Division 7 of Title 1 of the Government Code) or the federal Freedom of Information Act (Section 552 of Title 5 of the United States Code).
- (f) This section applies to all employers, including state and local government employers and the Legislature.
 - (g) Nothing in this section shall prohibit an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer.
 - (h) If an applicant voluntarily and without prompting discloses salary history information to a prospective employer, nothing in this section shall prohibit that employer from considering or relying on that voluntarily disclosed salary history information in determining the salary for that applicant.
 - (i) Consistent with Section 1197.5, nothing in this section shall be construed to allow prior salary, by itself, to justify any disparity in compensation.

ⁱ California Labor Code §432.3.

ⁱⁱ Jessica L. Semega, Kayle R. Fontenot, and Melissa A. Kollar, Income and Poverty in the United States 2016, (2017), *Current Population Reports*, pp.60 –259, U. S. Census Bureau.

ⁱⁱⁱ California Labor Code §1197.5.