Blog Post

The New Interview Taboo: Salary History Inquiries

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Inquiries employers may make concerning job applicants have been under close scrutiny. Many states and cities already limit an employer's ability to use or inquire about an applicant's credit or criminal history. Now add salary history to the list of topics that may be off limits during an interview, depending on where your company operates.

In 2016, Massachusetts became the first state to pass a law banning employers from seeking the salary history of a prospective employee before making a job offer to the prospective employee. The City of Philadelphia was the first city to enact an ordinance limiting salary history inquiries, followed soon after by New York City. California, Delaware, Oregon, Puerto Rico, and the City of San Francisco have also each passed laws limiting salary history inquiries.

Multi-state employers need to be most concerned about New York City's salary history ordinance, which goes into effect next week, on October 31, 2017, and Delaware's code provision, which goes into effect on December 14, 2017.

What's the Bottom Line On Salary History Inquiry Bans? Don't Ask.

While the limitations imposed by each jurisdiction's salary history inquiry law vary, the bottom line is that employers with worksites in those jurisdictions

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may not ask job candidates about their compensation history during the interview process. However, most of the laws generally do not prohibit an employer from considering salary history information when determining salary to offer an applicant, if the applicant voluntarily and without prompting discloses his or her salary history to the prospective employer. Employers should review the particular limitations and details of the state and local salary history inquiry laws that affect their worksites to ensure compliance and determine additional limitations imposed by the laws.

What's An Employer to Do Next? Start Compliance Efforts and Keep Watch.

Employers must be proactive in their compliance efforts as the effective date of the various state and local salary history inquiry bans approach. For employers who operate in California, Delaware, Massachusetts, New York City, Oregon, Philadelphia, Puerto Rico, and San Francisco, it's time to update your job application form and train employees involved in the interview and reference verification process regarding the applicable limitations on salary history inquiries before the following current effective dates for each jurisdiction's salary history law:

- California: January 1, 2018
- Delaware: December 14, 2017
- Massachusetts: July 1, 2018
- New York City: October 31, 2017
- Oregon: October 6, 2017 (enforcement beginning January 1, 2019)
- Philadelphia: was scheduled to go into effect on May 23, 2017, but has been stayed pending resolution of a lawsuit filed by the Chamber of Commerce for Greater Philadelphia seeking to have the ordinance struck down.
- Puerto Rico: March 8, 2017 (penalty provision effective March 8, 2018)

- San Francisco: July 1, 2018

Efforts to ban salary history inquiries in Illinois and New Jersey were vetoed by the governors of those respective states this past summer. At the federal level there have been several attempts to enact legislation limiting salary history questions, including two bills (H.R. 6293 and H.R. 6030) that were introduced in the U.S. House of Representatives in 2016. The Pay Equity for All Act of 2017, H.R. 2418, which would make salary history questions illegal in all 50 states, is currently pending in the House.

As a number of states and cities have proposed legislation in the last year to prohibit private employers from asking applicants about salary history, multi-state employers are wise to keep a close watch on this trend and stay current on the status of legislation that may apply to their worksites.