



Salary History in the Hiring Process

Over the past year, there have been several jurisdictions that have enacted laws specifically prohibiting employers from inquiring about salary history during the interview and screening process. More jurisdictions are considering similar legislation, indicating a trend toward new industry norm in an additional attempt to secure equal pay for employees. Employers should review their current employment hiring and screening policies to determine if salary history is being requested during the process and make appropriate revisions.

This information is presented for general educational purposes and is provided solely for the convenience of its readers. It is not a substitute for legal advice. Consultation with qualified legal counsel is recommended for all matters of employment law.

California

As of January 1, 2018, California employers are no longer able to ask a job applicant about his or her salary history. Under the law, employers:

- (1) May not ask, either orally or in writing, personally or through an agent, for an applicant's prior salary history, including compensation and benefits needs and requirements;
- (2) May not consider such information, if it is learned, in determining whether to offer employment to that applicant and if so, what compensation package should be offered; and
- (3) Must provide a pay scale for the position being applied for upon reasonable request of the applicant.

There are very few caveats to these rules. For example, applicants are not prohibited from voluntarily, without any prompting by the employer, disclosing their salary history, and if they choose to do so, employers may consider that information. Additionally, the law does not apply if the salary history is disclosable to the general public pursuant to federal or state law. Finally, the law does not define "pay scale" or "reasonable request."

Full text of the [California law](#).

California – City of San Francisco

Effective July 1, 2018 (penalties implemented as of July 1, 2019), employers in San Francisco are prohibited from asking about a job applicant's current or prior salaries; relying on an applicant's salary history in determining whether to make a job offer and what salary to offer; retaliating against an applicant for refusing to disclose salary history; and releasing a current or former employee's salary history without written authorization (unless disclosure is required by law or the information is publicly available).

The salary history ban covers all types of jobs, including temporary work, seasonal work, and commissioned work. However, an employer may consider a job applicant's salary history if it is disclosed voluntarily, without prompting from the employer.

Full text of the [San Francisco law](#).

Delaware

Effective December 14, 2017, employers are prohibited from inquiring into an applicant's compensation history. An applicant may voluntarily disclose the information and the law does not prohibit the employer and applicant from negotiating compensation and discussing expectations, so long as the employer does not request the applicant's compensation history.

An employer is permitted to seek such information after an offer, including compensation, has been made and accepted.

Full text of the [Delaware law](#).

Massachusetts

Effective July 1, 2018, according to the Pay Equity Act, employers are prohibited from requiring salary history from applicants before receiving a formal job offer. Employees may, however, freely volunteer such information with co-workers.

Specifically, it shall be unlawful for an employer to:

1. Require, as a condition of employment, that an employee refrain from inquiring about, discussing or disclosing information about the employee's own wages or about any other employee's wages.
2. Seek the wage or salary history of a prospective employee from said employee or a former employer.
3. Retaliate, in any manner, against the employee because said employee opposed a practice made unlawful by the act.

*Massachusetts was the first state to pass such legislation.

Full text of the [Massachusetts law](#).

New York

Currently, New York has no statewide “Salary History” law. However, the city of New York has its own laws.

New York – New York City

As of October 31, 2017, all New York City employers, regardless of their size, are prohibited from inquiring about a job applicant’s salary history during the hiring process.

While the law continues to allow employers to engage in discussions with prospective employees about salary and benefits expectations, it is now an unlawful discriminatory practice for an employer in New York City to:

- (1) inquire into the salary history of an applicant or
- (2) to rely on the salary history of an applicant to determine the salary, benefits, or other compensation during the hiring process.

The term “inquire” includes searching public records for an applicant’s compensation history. It is important to note that **inquiries would violate the law regardless of whether they are made before or after a conditional offer.** However, if a prospective employee volunteers such information, without prompting, the employer may consider it.

Full text of the [New York City law](#).

Oregon

Effective October 6, 2017 (for inquiries), January 1, 2019 (for consideration), January 1, 2024 (for penalties), Oregon employers are prohibited from screening job applicants based on current or past compensation; determining compensation based on current or past compensation of a prospective employee; and asking applicants about their salary history or seeking the information from other employers.

Employers will not be prohibited from requesting a prospective employee written authorization to confirm prior compensation, but only after the employer makes an offer of employment. Employers may also consider the compensation of a current employee during a transfer, move, or hire of the employee to a new position.

Full text of the [Oregon law](#).

Pennsylvania

Currently, Pennsylvania has no statewide “Salary History” law. However, the city of Philadelphia has its own laws.

Pennsylvania – City of Philadelphia – ENJOINED, NOT CURRENTLY EFFECTIVE

Effective May 23, 2017, employers are prohibited from inquiring about an applicant’s wage history at any stage of the hiring process or requiring disclosure of previous salaries as a condition of employment. Employers are also prohibited from retaliating against applicants if they do not disclose this information. If employers come across the

information by another means, they are prohibited from using it to make salary decisions, unless the job applicant knowingly and willingly disclosed it. This law is under the Fair Practices Ordinance: Protections Against Unlawful Discrimination.

*Philadelphia was the first city to pass such legislation.

Full text of the [Philadelphia law](#).

Puerto Rico

Effective March 8, 2017 (penalties implemented as of March 8, 2018), employers are prohibited from inquiring into a job applicant's prior salary history. However, if the applicant volunteers such information or a salary was already negotiated and set forth in writing in an offer letter, the employer may inquire or confirm salary history.

Pending States

Georgia

Illinois

New York

North Carolina

Texas

Washington