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Helping To Close The Gap: US Salary History Bans

GENDER PAY GAP SERIES

In our [global gender pay gap thought leadership series](#), we've highlighted the numerous ways governments around the world are taking actions aimed at closing the gap. In the US, the movement to prohibit the practice of inquiring about an applicant's salary history continues to gain steam. Cities and states across the country have enacted legislation making it unlawful to inquire about prospective employees' salary history. Proponents of salary history bans argue that using past compensation in future employment decisions perpetuates existing pay disparities among women and minorities.

The tricky part for multi-state employers is that each new law has its own twist, for instance, California's ban applies to employers and their "agents." California's law also requires employers to provide the pay scale for a position to an applicant upon reasonable request. Many other states and municipalities, however, have less clear guidance.

To help you track these recent developments, we've summarized salary history bans in the US in the table below. (Of course, always check to see if any local legislation applies.) View our [Spotlight on the US's gender pay gap](#) article for more information on how the US is addressing gender pay and pay equity issues.

City, State or Territory	Restriction	Nuances to note
Albany County, NY	For employers with 4 or more employees, effective in 2018, the local law prohibit employers from requesting, requiring, or screening based on an applicant's current or former wages, including benefits and other compensation.	Employers may confirm an applicant's prior wages, including benefits, other compensation, or salary history, after both: <ul style="list-style-type: none"> making the applicant an offer of employment that includes compensation. receiving the applicant's written authorization.
California	Effective January 1, 2018, all California employers prohibits employers from asking applicants about their salary history. Pursuant to Labor Code Section 432.3, employers (and their agents) cannot: <ol style="list-style-type: none"> rely on the salary history of an "applicant" as a factor in determining whether to offer the applicant employment or what salary to offer the applicant, except in specified circumstances; seek salary history information orally or in writing, including information about compensation and benefits. 	<ul style="list-style-type: none"> Section 432.3 further requires employers, upon "reasonable request," to provide the "pay scale" for a position to an applicant applying for that position. "Pay scale" means a salary or hourly wage range, and not other forms of compensation such as equity or bonus compensation. "Reasonable request" means a request made after an applicant has completed an initial interview with the employer. Employers need not provide pay scale information to applicants until after they have completed their first interview. "Applicant" or "applicant for employment" means an individual seeking employment with the employer and is not currently employed with that employer in any capacity or position. Employers are allowed to ask applicants their "salary expectation" for the position applied for. However, employers must still avoid inquiries that might be construed as pressuring an applicant to disclose salary history.
Connecticut	Effective January 1, 2019, except when certain limited exceptions apply, all employers cannot: <ol style="list-style-type: none"> inquire about a prospective employee's wage and salary history. direct a third party to make the inquiry. 	"Wages" are defined as compensation for labor or services, whether the amount is determined by: time, task, piece, commission, or other basis of calculation. "Wages" does not include "other elements" of an applicant's compensation structure, if the employer does not inquire about the value of those other elements.
Delaware	Effective December 14, 2017, all Delaware employers and their agents: <ol style="list-style-type: none"> cannot screen applicants based on their compensation histories, and are prohibited from seeking an applicant's compensation history. 	<ul style="list-style-type: none"> "Applicant" means a prospective employee applying for employment. Employers are explicitly permitted to discuss and negotiate compensation expectations with an applicant, directly or through an agent, if done without requesting or requiring the applicant's compensation history.

City, State or Territory	Restriction	Nuances to note
Hawaii	Effective January 1, 2019, all employers are prohibited from: <ol style="list-style-type: none"> 1. inquiring about an applicant's salary history; 2. relying on salary history to determine an applicant's salary, benefits, or other compensation. 	The salary history ban does not apply to either: <ul style="list-style-type: none"> • applicants for internal transfer or promotion. • public positions where salary, benefits, or other compensation is subject to collective bargaining.
Massachusetts	Effective July 1, 2018, it is unlawful for any MA employer and their agents to seek an applicant's wage or salary history before making an offer of employment.	Nothing in the law prohibits an employer from asking a prospective employee about their compensation needs or expectations.
New York, NY	Effective October 31, 2017, all NY city employers are prohibited from asking about an applicant's salary history.	The salary history ban does not apply to either: <ul style="list-style-type: none"> • applicants for internal transfer or promotion. • public positions where compensation is determined under a CBA.
Oregon	Beginning October 6, 2017, all Oregon employers are prohibited from seeking an applicant or employee's salary history.	Compensation includes: wages, salary, bonuses, benefits, fringe benefits and equity-based compensation. It does not include tips.
Philadelphia, PA (*PENDING)	Philadelphia's Wage Equity Ordinance prohibits employers from inquiring about an applicant's wage history or conditioning consideration for an interview or employment on disclosure of that information.	The ordinance was scheduled to take effect in May 2017. Implementation was delayed pending a legal challenge; litigation is still ongoing.
San Francisco, CA	Generally speaking, the ordinance – effective July 1, 2018 prohibits 3 things: <ol style="list-style-type: none"> 1. It bans employers from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. 2. It prohibits employers from asking applicants about their current or past salary. 3. Also, employers are prohibited from releasing the salary history of any current or former employee to that person's employer or prospective employer without written authorization from the current or former employee (unless the release of salary history is required by law, is part of a publicly available record, or is subject to a collective bargaining agreement). 	<ul style="list-style-type: none"> • "Applicant:" person applying for employment to be performed in the geographic boundaries of the city and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the city. "Applicant" does not include a person applying for employment with their current employer. • "Employer:" any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized registered to do business in the city. "Employer" includes job placement and referral agencies and other employment agencies. • "Employment:" any occupation, vocation, job, or work, including but not limited to temporary or seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency for which the applicant is to receive a salary. Employment does not include work as an independent contractor. • "Inquire:" any direct or indirect statement, question, prompting or other communication, orally or in writing personally or through an agent, to gather information or about an applicant, using any mode of communication, including but not limited to application forms and interviews.
Suffolk County, NY	Employers with 4 or more employees, effective June 30, 2019, employers are prohibited from inquiring about, or relying on when determining compensation, an applicant's wage or salary history.	

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Vermont	Effective July 1, 2018, employers are prohibited from inquiring about, seeking, requiring, or screening for interview purposes based on information about an applicant's current or past compensation.	Employers may inquire about a prospective employee's salary expectations or requirements.
Westchester County, NY	Effective July 9, 2018, the local law prohibits employers (with 4 or more employees) and other covered entities generally from relying on, requesting, requiring, or seeking an applicant's current or former wages.	Employers and other covered entities may rely on prior wage history to determine an applicant's wages if: <ul style="list-style-type: none"> • the applicant voluntarily discloses the information; and • the voluntary disclosure is provided to support a higher wage than the one offered by the employer.
Puerto Rico	Effective March 8, 2017, employers are prohibited from requesting an applicant's salary history from the applicant or their former employer.	

Outside the US

Outside of the US, we have not seen comparable efforts to prohibit salary history inquiries, with the notable exception of legislation in **Canada**. Ontario's Pay Transparency Act proposes requirements concerning disclosure of compensation particulars of employees and prospective employees. In addition, and among other things, the Act would prohibit employers from asking candidates about their compensation history, whether personally or through an agent, with few exceptions. However, for now, the law is not in effect – it is currently on hold to allow the government to engage in public consultations. (Read more [HERE](#).)

Efforts to close the gender pay gap outside the US have focused primarily on transparency and representation. The **UK** and **Australian** governments have recently focused their efforts on representation and the gender pay gap, requiring employers publish data about the difference in average pay between men and women. In the UK, gender pay gap data is made available for public use, whereas in Australia the government publishes aggregated pay gap data from which individual companies cannot be identified. Other countries across Europe have also recently introduced pay transparency legislation (e.g. **Germany** and **France**). (Ireland and Spain are also considering similar legislation.)

Takeaways

In "no ask" jurisdictions, it is recommended that employers:

- Remove all salary questions from hiring forms (including job applications, candidate questionnaires, and background check forms);
- Update interviewing and negotiating policies and procedures;
- Train recruiters, hiring managers and interviewers regarding the importance of ensuring that applicants are not pressured (even indirectly) to disclose salary history.

It is further recommended that employers adopt a uniform practice that complies with the strictest "no ask" jurisdiction in which the employer operates. A uniform practice will help to avoid non-compliance.

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Our gender pay gap series

The Baker McKenzie Gender Pay Gap series will be spotlighting gender pay gap regulations in key jurisdictions and exploring the central issues, including how to narrow the gap.

For more on the global picture and how our global network of over 700 labor and employment lawyers are helping clients address this issue, see our [Gender Pay Gap Hub](#).

