

Labor and Employment Alert: California Prohibits Employers' Salary Inquiries

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On October 12, 2017, California became the latest jurisdiction to prohibit employers from inquiring into applicants' salary history. San Francisco, New York City, Philadelphia, Oregon, and Massachusetts have recently enacted similar laws. California's Equal Pay Act already prohibits employers from paying employees who perform substantially similar work differently based on sex, race, or ethnicity, and from using prior salary, by itself, to justify any disparity in compensation. California law now adds additional prohibitions concerning employee compensation.

The new law prohibits both public and private employers from relying on an employment applicant's salary history information as a factor in determining whether to offer employment to the applicant or what salary to offer the applicant. Employers are further prohibited from seeking salary history information, including information regarding compensation and benefits, about an applicant. An employer, upon reasonable request, is required to provide the pay scale for a position to an applicant.

An applicant is not prohibited from voluntarily and without prompting disclosing salary history information to a prospective employer. If an applicant does, an employer may consider or rely on that salary history information in determining the salary for that applicant. Additionally, the law does not apply to salary history information that is disclosable to the public under state or federal law (such as through the California Public Records Act).

The law becomes effective on January 1, 2018. Employers should review their hiring policies and practices (including employment applications) to ensure they comport with these new requirements. Contact your Vorys lawyer if you have questions about permissible and impermissible pre-employment inquiries.