

California's Salary History Ban: Answers to Frequently Asked Questions

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1. Can employers use recruiters to determine applicants' salary histories?

Under California's new salary history ban, employers are prohibited from seeking salary history information about an applicant “personally *or through an agent*.” (Emphasis added.) Employers may want to take action to ensure that all internal representatives revise any practices that would be in violation of the law. Written applications should also be revised to the extent they ask for information on salary history.

Since employers may be liable for violations of the statute even if it is an outside recruiter who inquires about a candidate's salary history, employers may want to ensure outside recruiters conducting recruiting efforts are in compliance with the statute. Employers may also want to consider indemnification from external recruiters for any acts taken by external recruiters that may be deemed to violate the new law.

2. What happens if a job applicant volunteers salary history information?

Although the law prohibits employers from inquiring about applicants' salary histories, applicants may still, "voluntarily and without prompting," disclose their own salary history information to a prospective employer. The employer may consider or rely on that information in determining salary as long as prior salary is not the only factor justifying any disparity in compensation. This is consistent with California's Fair Pay Act (California Labor Code Section 1197.5). If job applicants voluntarily disclose their prior salary, employers may want to document the voluntary disclosure and take precautions to ensure that the disclosed prior salary does not become the sole factor in determining that individual's salary.

3. Can employers ask applicants about the benefits they have been provided in the past during the application process?

The new California law prohibits employers from asking about salary history information, including "compensation and benefits." Employers cannot ask about the value of an applicant's benefits, such as equity, health insurance, or other monetary benefits. However, at this point, without further guidance from regulators, employers may be able to ask if there would be benefits that the applicant would be giving up and whether that would be a barrier to making a transition, as long as the employers do not specifically ask about the monetary value of those benefits.

4. Can employers verify a selected applicant's salary history post-offer?

Under the California law, employers are not prohibited from reaching out to a selected applicant's previous employer to verify the applicant's prior salary after the applicant has been given a job offer. However, in certain jurisdictions, [such as San Francisco](#), employers may not disclose the salary history of any current or former employee to a prospective employer without written authorization from the employee.

5. When does an employer need to provide a salary range to an applicant?

Upon "reasonable request," employers are now required to provide a "pay scale" for an applied-for position to an applicant. Although the law does not specifically define "pay scale," employers may want to be prepared in advance to disclose the company-approved pay range for a position. When providing the salary range, employers may qualify it by explaining that the salary offered will be based on appropriate

factors such as qualifications and experience. Employers may want to consider using salary bands in recruiting materials so that applicants can identify the possible salary range for self-selection purposes. Employers may also want to implement a system to document when an applicant requests a pay scale and that his or her request was fulfilled. Both written and oral requests for a pay scale must be satisfied.

We will continue to monitor the development of this new law and provide further information on its implementation into your workplace.

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