

EMPLOYER ALERT: It May Soon Be Illegal to Ask Potential Employees to Disclose Their Previous Salary

AUTHOR: TIMM SCHOWALTER

On August 1, 2016, Massachusetts became the first state to bar employers from asking about an applicant's salary before offering them a job. Bill S.2119, which goes into effect January 1, 2018, states that it shall be an unlawful practice for an employer to seek the wage or salary history of a prospective employee from the prospective employee or a current or former employer. The law does not prohibit prospective employees from voluntarily disclosing such information. Further, an employer may seek or confirm a prospective employee's wage or salary history after an offer of employment with compensation has been negotiated.

The goal behind Bill S.2119 is to eliminate wage discrepancies for women and minorities. By prohibiting employers from asking about a potential employee's previous salary history, Massachusetts seeks to ensure that the historically lower wages and salaries assigned to women and minorities do not follow them for their entire career.

The prohibition on inquiring as to the prior salaries of prospective employees is rapidly spreading. On November 4, 2016, while a New York City Bill was pending approval to bar inquiries of prior salary history, New York City mayor Bill de Blasio signed an executive order that prohibits employers from asking such questions. On September 14, 2016, H.R. 6030 was introduced in the United States House of Representatives. This bill would make it an unlawful practice to ask a prospective employee about their previous wages or salary history. New Jersey Senate Bill 2536, Washington D.C. Bill 210878, and Philadelphia Bill 160840 were also introduced in September 2016 and similarly prohibit an employer to inquire about the salary history of a job applicant.

Other legislation has been introduced that does not specifically prohibit inquiring as to salary history, but does bar employers from making compensation determinations based solely on an employee's prior salary history. California Assembly Bill 1676 was passed September 30, 2016 and becomes effective on or before January 1, 2017. This bill states that prior salary by itself may not justify any disparity in compensation.

Although all passed and proposed legislation that would prohibit inquiries of salary history is currently confined to the east and west coasts, employers should be attentive as the trend barring questions of prior compensation continues to spread. Contact our team for help or questions concerning this spreading litigation and how it may affect your business.