BAN ON COMPENSATION HISTORY INQUIRIES
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Unless you’re living under a rock, you’ve been hearing discussions about a ban on compensation history inquiries (referred to in this piece as ‘compensation history ban’) in the hiring world. It started off as a slight murmur of something that some cities were contemplating, but has grown to a loud chatter as not only cities, but states have adopted this new legislation. Here, we’ll break down exactly what this compensation history ban is, why it’s happening, who it’s impacting, and finally, what, if anything, to do about it.

What Exactly is This Compensation History Ban Anyway?

In its most basic form, this new set of laws make it illegal for employers to ask applicants for their compensation history. We’ll break it down more below, but in some locations, this can be different for public and private employers (the full extent of the law is still being hammered out, so at this early stage it’s a bit fuzzy as to the guidelines followed in each case). Employers also cannot request the potential employee’s compensation history from another source. However, candidates can still freely share their compensation history with the employer if they choose to do so. One of the more common reasons employers state in support of the compensation history question is to weed out candidates that are earning or expecting salaries that are out of the budget range for that role.
The spirit of the law is to ensure pay equality for all, based on merit and experience. One large driving factor is that in spite of small steps of progress along the years, there is still a gender pay gap in the U.S.. According to the National Women’s Law Center, women earn on average, about 80 cents to a man’s dollar. That gap has not narrowed much in the past decade, and is even wider for women of color.¹

The thought is that by prohibiting employers from asking about a candidate’s compensation history, it helps prevent the issue of basing the candidate’s pay, benefits, etc. on previous history. Instead, (ideally) employers would base the level of compensation on the candidate’s experience and quality of performance.

The pay gap for women is thought to start early on in their careers and continues each time they are asked to give their compensation history with each role change. For some, an under-market salary could signify to prospective employers a red flag, even though there are many solid reasons for the rate (change of career, accepting the role at a lower rate with the promise of a steady pay increase plan, etc.). Once an employer is aware of the lower rate, the applicant would be hard-pressed to successfully land a higher salary. On the flip side, a woman who refuses to supply her salary history was offered 1.8% less than a woman whom did disclose...if a man refused, he received an offer 1.2% higher than a man who did, per a 2017 survey from PayScale.²

**Why is the Compensation History Ban Being Put into Place?**

INTRODUCTION
Where is this Legislation Being Put into Practice?

- **San Francisco**: The law goes into effect July 1, 2018 and impacts private and public employers. California also has similar requirements, but employers also have to adhere to the local rules.

- **Oregon**: The law goes into effect January 2019 and impacts private and public employers.

- **New Orleans**: Already in effect but only impacts city departments and employees of contractors who work for the city.

- **Philadelphia**: The law was supposed to go into effect May 23, 2017 but has been halted temporarily due to a lawsuit from the Chamber of Commerce.

- **Massachusetts**: The law goes into effect July 2018 and impacts private and public employers.

- **New York City**: The law went into effect October 31, 2017 and impacts private and public employers.

- **Delaware**: The law goes into effect December 2017 and impacts private and public employers.

- **Puerto Rico**: The law goes into effect March 2018 and impacts private and public employers.

At least eight other states such as Illinois, Maine, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, Vermont – have tried or are considering this as well.
What’s the Buzz Around This New Legislation?

As you can imagine, the industry is all atwitter about this new change, whether or not it’s currently slated to affect their area yet or not. Here’s a smattering of what we’re hearing:

**Whoop! This Law is Progress**

“Broadridge supports the goal of eliminating the gender compensation gap, by prohibiting the collection and use of historical compensation data in the U.S., to determine offers. We are pleased to have partnered with BountyJobs to help ensure that our search firm providers are aligned with this important legislation and effort.”

STEVEN DAVIS  
Vice President, Global Head of Talent Acquisition, Broadridge Financial Solutions, Inc.

“Removing questions about applicants’ salary history will help job seekers who have been underpaid for too long to negotiate a salary based on their skills and qualifications rather than their past salaries.”

CARMELYN P. MALALIS  
NYC Commission on Human Rights Commissioner

**Nope! This Law Will Cause More Issues Than Solutions**

“Employers have generally argued that they utilize salary history information for legitimate, nondiscriminatory reasons, such as matching their job offers to current market rates.”

BENJAMIN EBBINK  
Of Counsel, Fisher Phillips LLP

“There will be more people applying who may not even be in the ballpark at all.”

MARK JAFFE  
President and CEO of the Greater New York Chamber of Commerce

“We think the law is unconstitutional, and we want to stand up for the economic rights and the free speech rights the First Amendment guarantees. Second, we think it’s a good venue to really signal that we would like to see a shift in the regulatory environment of our local government.”

ROB WONDERLING  
President and CEO, Chamber of Commerce for Greater Philadelphia

“Our advice to organizations is that they should price the position, not price the person. You’re trying to fill a certain role. What you should be doing is understanding the market rate for that role.”

LYDIA FRANK  
Vice President of PayScale
How Are Employers Interpreting the Law?

As you can imagine, employers are scrambling, trying to figure out exactly what the legislation requires, and pinpointing how they must apply it so they remain in compliance. Most experts seem to recommend following the legislation to the strictest letter possible:

Kerry Lear, Director of Content at Mammoth HR in Portland, Oregon gives this advice to employers, “Just take the salary questions off for everyone. We expect other states to be joining along.

Jason Habinsky, Employment Lawyer and Partner at Haynes and Boone states, “One easy way to make sure you’re in compliance with employment laws nationwide or state-wide, depending on how vast your business is, is to pick the strictest law and then comply with that across the board. In other words, even if other states or cities don’t have a requirement or a ban on requesting salary information, you apply it universally or uniformly, outside of New York City as well. It’s a lot easier to administer and there are also good reasons for doing it. The purpose of the law is to not perpetuate discrepancies or gaps in pay and equity. There’s a good reason behind it and you can accomplish that beyond the state or city where it’s required.”
Okay, So Now What? What Steps Should Employers Take to Apply this Legislation?

We’re seeing that many industry experts suggest that the best course of action for employers is to do a complete audit of the documents used for their hiring process. Make sure the compensation history questions are removed from all job applications, background check papers, hiring policy paperwork, etc.

All employees of the organization, not just Human Resources or Talent Acquisition teams, should be trained on these new laws. Employers need to ensure none of their employees are asking these questions to candidates. If employers utilize external hiring agencies, recruiters or other third-party vendors those folks need to be educated on these new required policies as well. This could span from forms on third-party sites that require candidates to enter their compensation to third-party recruiters requesting this information via initial phone screens.

BountyJobs has stayed ahead of these changes with a dual-confirmation system:

- Upon reviewing a potential opportunity, the recruiter will be notified that the employer has instituted a ban on compensation history inquiries. The recruiter will then be required to acknowledge and agree to this policy before moving forward.

- Once submitting a candidate for consideration, the recruiter will again confirm that they abided by the policy and did not inquire about compensation history.

Rather than relying on previous compensation history as a benchmark, come up with a specific compensation range for each open role and look at each candidate’s experience and education.
If employers violate these laws, they put themselves at risk for a lawsuit. If found guilty, the penalties owed could cost $250,000...plus legal fees, negative press, and everything else that comes along with a lawsuit – which could include class action.

What Should a Candidate Do If Asked These Questions?

Realistically, not all employers will follow this legislation to the full extent. Before going so far as taking legal action, the candidate could:

🌟 Refocus the discussion - hone in on why they are qualified for the job.

🌟 **DO YOUR HOMEWORK.** Know what the going compensation range is for that role, with someone of your experience level. The law does not prohibit the candidate from discussing the compensation they are expecting.

If the candidate does go down the road toward a lawsuit, they could start by lodging a legal complaint. In New York specifically, the NYC Commission has a hotline for those that have experienced compensation history discrimination: 718-722-3131 or dial 311 and ask for “Human Rights”. Check to see what resources your community has as a starting point.
Final Nuts & Bolts

The Compensation History Ban shows no sign of stopping, with the assumption that it will be adopted further on the state and city level. To avoid costly and frustrating legal headaches, experts are erring on the side of caution and encouraging employers to apply the law to the fullest degree...and embrace the spirit of the law which is to help ensure equality across genders and race.

SUMMARY

Have a topic you’d like us to cover? Email our Sr. Content Marketing Manager, Erin Geiger, at blog@bountyjobs.com.

SOURCES

1 https://nwlc.org/resources/faq-about-the-wage-gap/
2 https://www.payscale.com/data/salary-history
10 https://www1.nyc.gov/site/cchr/media/salary-history.page
ABOUT BOUNTYJOBS

BOUNTYJOBS IS THE LEADING TECHNOLOGY FOR COLLABORATION BETWEEN EMPLOYERS AND AGENCIES

Our web-based platform consolidates third-party search activities into one convenient location; giving talent acquisition leaders the tools to track, manage, and evaluate their search spend. The result: better hires, faster. BountyJobs is headquartered in Austin, TX and is backed by Greylock Partners, Accel Partners, and RPM Ventures.

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