

CLIENT NEWS BRIEF

New Law Clarifies Limits on Employer Use of Applicant Salary History

A new law clarifies recently enacted rules prohibiting employers from asking job applicants about their salary history. The changes included in Assembly Bill (AB) 2282, which becomes effective on January 1, 2019, eliminate some ambiguity concerning an employer's limitations with regard to requesting an applicant's salary history information.

Background

In 2017 lawmakers approved AB 168, which limits what employers, including public entity employers, can request from applicants in terms of salary history information and also how that information can be used. ([See 2017 Client News Brief No. 68.](#)) It added section 432.3 to the Labor Code, which prohibits employers from asking a job applicant for salary history information and from using an applicant's salary history information as a factor in determining whether to offer the applicant employment or what salary to offer the applicant, except in specified circumstances.

AB 168 did permit employers to obtain salary history information that is legally required to be disclosed to the public, such as information that is subject to the California Public Records Act or federal Freedom of Information Act. Employers may also consider salary history information if the applicant voluntarily provides it.

AB 2282, makes the following changes to the above stated law:

- An "applicant" or "applicant for employment" means "an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position."
- A "reasonable request" means "a request made after an applicant has completed an initial interview with the employer."
- "Pay scale" means a "salary or hourly wage range."
- Employers may ask an applicant about his or her salary expectation for the position for which the applicant is applying.

Takeaways

Existing law prohibits an employer from paying any employee at a wage rate less than the wage rate paid to employees of the opposite sex for substantially similar work, under substantially similar working conditions, unless the employer demonstrates that one or more of the following factors, reasonably applied, account for the entire wage differential:

- A seniority system;
- A merit system;

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- A system that measures earning by quantity or quality of production; and/or
- Education, training or experience not attributed to gender that fulfills a legitimate business purpose.

The Ninth Circuit Court of Appeals recently ruled that using an employee's prior salary as a basis for establishing their initial salary is a violation of the federal Equal Pay Act. ([See 2018 Client News Brief No. 25.](#)) AB 2282 clarifies and reiterates that although prior salary cannot justify any disparity in compensation, an employer can make a compensation decision based on an employee's current salary when the resulting wage differential is justified by one or more of the above stated factors. AB 2282 provides employers a safety net when there are legitimate business reasons for a wage differential between genders.

For more information about AB 2282 or about the use of salary history in the employment process in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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