

# CLIENT NEWS BRIEF

## Legislative Update: Employers Can't Ask, but Applicants Can Tell

Employers, including public agency employers, will be forbidden from asking job applicants for their salary history when Assembly Bill (AB) 168 becomes effective on January 1, 2018.

AB 168 explicitly prohibits public agency employers from asking job applicants for salary history information. However, when an applicant voluntarily and without prompting provides salary history information, employers may use the information as a factor in determining salary if the employer's decision is supported by a bona fide factor other than sex, race, or ethnicity. Further, if the applicant's prior salary history information is subject to public disclosure pursuant to federal or state law, employers may independently obtain the public information and use it as a factor in determining salary if the employer's decision is supported by a bona fide factor other than sex, race, or ethnicity.

AB 168 also requires employers to provide a pay scale for an open position upon an applicant's "reasonable request." Employers that violate AB 168 are subject to monetary civil penalties under the Private Attorneys General Act.

The bill's supporters argue that eliminating the practice of asking for salary history information will equalize pay for women and people of color. They claim that basing wages on market value instead of salary history will eradicate pay inequality.

Critics of AB 168 say the new law is gratuitous because there are already protections in place to prevent wage discrimination. For example, California Labor Code section 1197.5 prohibits an employer from using an applicant's salary history, by itself, to justify a pay disparity. They argue that there are often legitimate reasons to ask about salary history, including unavailability of information regarding the market value for a newly created position. The new law may expose employers to litigation by creating another reason for applicants to sue prospective employers.

The availability of public agency salary information and the uniformity of wages paid to similarly situated workers may blunt the impact of AB 168 on the process of hiring rank-and-file employees and may minimize the need to ask applicants for salary history information. For school districts, the uniform salary schedule rule provides a rigid benchmark for certificated salaries that are paid uniformly based on an employee's education and years of experience. Classified employee salary schedules are similarly uniform in nature. Applicants for both certificated and classified positions are placed on the salary schedules based upon standard criteria.

AB 168 will likely have a greater impact on the negotiation of salaries for management position applicants, because public employers are now required to produce a salary range for open positions upon request and cannot place new hires within the range based solely upon the applicant's prior salary level. As a result, public employers may not have as much room to negotiate.

October 2017  
Number 68



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## Takeaways

Public employers should ensure that their standard application forms do not include a request for prior salary information. Further, public employers should train employees who interview prospective employees to refrain from asking applicants about their salary history.

For more information about AB 168 or on hiring practices 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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