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Connecticut Joins the Growing List of States Banning Employers From Inquiring About Job-Seekers' Salary History

Laws seeking to address gender-based pay discrepancies have been sweeping the nation. Elected officials have been grappling with how to address this issue, and many have taken action to do so by placing restrictions on an employer's ability to use an applicant's salary history in determining his or her salary. On May 22, Connecticut joined a growing list of states that have banned employers from asking a job applicant about his or her salary history or relying on salary history to determine the applicant's compensation unless the applicant voluntarily offers the information. The law applies to all Connecticut employers, regardless of size, and takes effect on January 1, 2019.

As we have previously covered here, in July 2015, Connecticut enacted a law addressing pay secrecy. The salary history inquiry ban is an amendment to the prior pay secrecy law. Under the current version of the law, employers may not prohibit an employee from disclosing or discussing the amount of his or her wages or the wages of another employee that have been disclosed voluntarily by the other employee. Employers also may not prohibit employees from inquiring about the wages of other employees. The statute further prohibits employers from requiring employees to enter into any sort of agreement limiting or waiving the rights provided to them under the law.

As amended, the law now also prohibits employers, including the state and its political subdivisions, from asking, or directing a third party to ask, about a prospective employee's wage and salary history. The definition of “wages” under the law is broad and includes anything that may be considered “compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation.” This amendment will significantly alter the hiring process used by most employers, who commonly either themselves or through a third party (such as a recruiter) inquire about an applicant's salary history during the hiring process.

There are a few narrow exceptions to the law's prohibitions. Employers may consider an applicant's salary history if the applicant *voluntarily* discloses his or her wage and salary history. The law also does not apply to any actions taken by an employer, employment agency, or its employees or agents under a federal or state law that specifically authorizes the disclosure or verification of salary history for employment purposes. Additionally, employers may inquire about an applicant's compensation structure (e.g., stock options or other bonuses and benefits), but may not inquire about the value of such items.

Remedies for Violations

The law has a two-year statute of limitations. Employers can be found liable for compensatory damages, attorney fees and costs, punitive damages, and any legal and equitable relief the court deems just and proper.

A Continuation of a Movement

This legislation follows similar efforts in other jurisdictions to address gender-based pay disparities. Recently, New York City enacted a ban on salary history inquiries, which was effective October 31, 2017. A similar law in Massachusetts is scheduled to take effect in July 2018. Several other states and municipalities have enacted or are considering similar legislation.

What Should Employers Do?

Employers must review their hiring practices and procedures to ensure compliance with the law. Questions relating to salary history should be removed from job application materials, including background checks and other verification inquiries

(whether conducted internally or by third parties). Employers should also train human resources personnel and all other employees who may be involved in the hiring process to understand the prohibitions and parameters of the new law.

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