

CLIENT ALERT

California Salary History Ban Enacted, Effective January 1, 2018

October 13, 2017

On October 12, 2017, Gov. Jerry Brown signed into law California's salary privacy law, which prohibits California employers from seeking or relying on salary history information, including compensation and benefits, about an applicant for employment. Agents of the employer—including headhunters and recruiters—are likewise prohibited from seeking salary history information. While the law states that employers may still consider or rely on salary history information if it is voluntarily provided by the applicant, without prompting, employers should be cautious about doing so unless they can clearly demonstrate that the information was volunteered, without prompting, by the applicant. The new law also requires employers to provide applicants, upon reasonable request, with a pay scale for the positions they seek.

The legislation, which adds Section 432.3 to California's Labor Code, will go into effect on January 1, 2018. California employers should therefore move quickly to revise employment applications as needed, and to provide appropriate training to Human Resources professionals, recruiters, and others involved in the recruitment and hiring process.

California joins Massachusetts, Oregon, Delaware, Puerto Rico, San Francisco, and New York City in passing laws which ban employers from inquiring about an applicant's current or former salaries – a trend that we expect to continue throughout the country. Implementation of a comparable law in Philadelphia is currently stayed pending a federal lawsuit by the Philadelphia Chamber of Commerce on grounds that it violates the First Amendment, the Due Process Clause, the Commerce Clause, and Pennsylvania's Constitution.

Gov. Brown has yet to make a decision regarding AB 1209, the Gender Pay Gap Transparency Act, which the Senate approved on September 11, 2017. That bill, if signed, would require employers to collect data on the mean and median salaries paid to women and men with the same job title or description, which information would be published by the Secretary of State and thus available to the public. We continue to monitor the status of this and other laws impacting employers.

For further information or advice concerning compliance with state and local salary history ban laws, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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