

California Law Limits Employer's Salary and Benefits History Inquiries to Job Applicants

Governor Jerry Brown signed [A.B. 168](#) last month, which prohibits employers from asking job applicants for salary history information. The California Labor Code will be amended as of January 1, 2018 to provide that employers "shall not... seek salary history information, including compensation and benefits, about an applicant for employment," nor "rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant."

In addition, employers must, upon reasonable request, "provide the pay scale for a position to an applicant applying for employment."

The new law, effective **January 1, 2018**, means that employers cannot ask about or rely on an applicant's previous salary history when deciding whether to offer a job or how much to pay. Notably, California Labor Code Section 1197.5(a)(2) already prohibits an employer from using an applicant's salary history by itself to justify a pay disparity. However, the new law still permits employers to consider an applicant's salary history when setting salary if the applicant discloses it "voluntarily and without prompting."

California, unlike New York, has not yet offered guidance on whether employee compensation can legally be exchanged during an M&A deal. If California follows New York's common-sense approach, it will likely permit the free exchange of employee salary information during due diligence, but caution is advised against sharing the same information with hiring managers making decisions about employee compensation.

Employers should ensure that their hiring processes comply with the new California law by revising employment applications to remove requests for salary history, training hiring personnel on best practices with respect to pre-employment inquiries and routinely drafting pay scales for open positions. Although A.B. 168 does not make violations of this provision a misdemeanor, nor specifically provide for penalties to be assessed, employers may be cited by the Division of Labor Standards Enforcement for noncompliance.

If you have any questions about best practices for your hiring process, contact experienced counsel for advice and information in this changing area of the law.

This update was authored by the California Employment Law team.

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Authors



Jon G. Daryanani

Partner

JDaryanani@perkinscoie.com [310.788.3224](tel:310.788.3224)



Jill L. Ripke

Senior Counsel

JRipke@perkinscoie.com [310.788.3260](tel:310.788.3260)



Javier F. Garcia

Partner

JGarcia@perkinscoie.com [310.788.3293](tel:310.788.3293)

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