

Pay Equity Issues & Insights Blog



Maine Passes Salary History Ban and Wage Transparency Law on Equal Pay Day, Expected to Be Signed By Governor

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Seyfarth Synopsis: On April 2, 2019, the Maine legislature passed a salary history ban ordinance. The law also has enhanced wage transparency provisions.

The Maine legislature marked Equal Pay Day 2019 with an amendment to the Maine Human Rights Act and Equal Pay Law, [LD 278](#) which adds a salary history ban and broadens a wage transparency provision in current law. The Maine Legislature passed a similar amendment in 2017, but former Governor Paul LePage vetoed the bill and the Legislature failed to override the veto. The current Governor, Janet Mills, has stated that she will sign the bill. Once signed, Maine will become the sixteen jurisdiction -- and the eight state -- to enact a salary history ban.¹

New Compensation History Ban

The new Maine law would prohibit employers from asking about a prospective employee's compensation history until after a job offer (including compensation) has been negotiated and made to the prospective employee. The bill creates an exemption for inquiries pursuant to any federal or state law that "specifically requires the disclosure or verification of compensation history for employment purposes." Compensation history is not defined but likely includes all components of compensation, not just salary.

The bill also provides that an employer's inquiry, either directly or indirectly, about the compensation history of a prospective employee prior to a job offer (including compensation) is evidence of unlawful discrimination.

Employers may seek to confirm an employee's or prospective employee's compensation history prior to an offer if that compensation history was voluntarily disclosed "without prompting by the employer or employment agency."

Broader Pay Transparency Provision

The law will also broaden the state's existing pay transparency law by prohibiting employers from stopping employees from discussing or disclosing their own or another employee's wages. The bill makes such policies a violation of the Maine Human Rights Act.

¹ Currently seven states (California, Connecticut, Delaware, Hawaii, Massachusetts, Oregon, and Vermont), six other cities or counties (San Francisco, CA, New York City, NY, Albany County, NY, Suffolk County, NY, eff. 6/30/2019, Westchester County, NY and Philadelphia, PA) and one Territory (Puerto Rico) have passed salary history bans. Maine would become the eighth state.

Risk To Employers

The potential fine per violation is \$100 to \$500. However, the real risk of exposure under the bill is that the mere act of asking about an prospective employee's compensation history can be cited as evidence of "unlawful employment discrimination" in complaints filed with the Maine Human Rights Commission.

What Should Employers Do?

If signed, the amendments will take effect on September 17, 2019, which is 90 days after the adjournment of the current session. Employers should review their job applications and other policies and procedures, make any necessary changes, and consider training hiring managers and human resources employees about the amendments.

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