

Pay Equity Issues & Insights Blog



California Attempts to Clarify Salary History Ban Legislation

By Jeffrey A. Wortman and Christopher Im

Seyfarth Synopsis: California Governor Brown signed into law yesterday Assembly Bill No. 2282 to clarify previously passed legislation that prohibits inquiries into an applicant's salary history. Read on for a recap of Assembly Bill No. 2282.

When AB 168 was [signed into law](#) in October 2017, California prohibited employers from asking job applicants for "salary history information." Under this legislation, California employers must provide "applicants" with the "pay scale" for a position upon "reasonable request." The law was rather unclear, however, about what each of these three terms meant. On July 18, 2018, Governor Brown signed new legislation, Assembly Bill 2282, designed to clarify those terms and other items in AB 168.

For example, under AB 168, it was not clear whether the term "applicant" meant only external applicants for a position or also current employees applying for the position. AB 2282 clarifies that an "applicant" is an individual who seeks employment with the employer, not a current employee.

Next, it was not clear what information an employer would have to supply when a reasonable request was made for the "pay scale" of a position. AB 2282 defines "pay scale" as a salary or hourly wage range and clarifies that the definition of "pay scale" does not include bonuses or equity ranges.

AB 2282 also clarifies what constitutes a "reasonable request" for pay scale information. A "reasonable request" is defined as a request made after the applicant has completed the initial interview.

Additionally, AB 2282 clarifies that although AB 168 prohibits employers from asking for the applicant's salary history information, employers may ask about an applicant's salary expectations for the position.

The new legislation addresses aspects of the California Equal Pay Act as well. It was unclear under what circumstances an employer could use prior salary to justify a disparity in pay. The new legislation attempts to clarify this: "Prior salary shall not justify any disparity in compensation. Nothing in this section shall be interpreted to mean that an employer may not make a compensation decision based on a current employee's existing salary, so long as any wage differential resulting from that compensation decision is justified by one or more of the factors listed in this subdivision." Those factors are (1) a seniority system, (2) a merit system, (3) a system that measures earnings by quantity or quality of production; and (4) a bona fide factor other than race or ethnicity, such as education, training, or experience.

For Seyfarth's full 2018 California Legislative Update, please [click here](#). For further information, please contact [Jeffrey A. Wortman](#) at jwortman@seyfarth.com, or [Christopher Im](#) at cim@seyfarth.com.

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