

# Management Alert



## Washington State Signs a Salary History Ban, with A Twist

By Christine Hendrickson

**Seyfarth Synopsis:** Yesterday, May 9, 2019, Washington State Governor Inslee signed the "[Washington Equal Pay and Opportunities Act](#)," which bans employers from asking about prior salary and will require employers to provide pay scale or wage information to both applicants and internal employees, if requested. The law applies to all employers with at least 15 employees and it goes into effect in July 2019.

### Salary History Ban

Washington State will become the ninth state and the seventeenth jurisdiction<sup>1</sup> with a salary history ban that applies to applicants for employment.

The Washington state pay equity law [enacted last year](#) already prohibited employers from justifying differences in pay by pointing to differences in prior salary. But now employers are banned from collecting or considering that information altogether.

Like many of the salary history bans the Washington State law will:

- Forbid employers from seeking the wage or salary history of an applicant for employment from the applicant or from the applicant's current or former employer;
- Require that an applicant's prior wage or salary history meet certain criteria.

Employers, however, can confirm an applicant's wage or salary history if the applicant has voluntarily disclosed his or her wage or salary history; and may also confirm it after an offer (including compensation) has been negotiated with the applicant.

### The Pay Scale Twist

The bigger news is the pay scale requirement. Washington State will become the third jurisdiction (following [California](#) and [Cincinnati](#)) to require employers to provide pay scale information. The twist is that this applies, also, to internal transfers, unlike the California law, which explicitly does not.

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<sup>1</sup> Nine states (California, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Oregon, and Vermont and now Washington), seven cities or counties (San Francisco, CA, New York City, NY, Albany County, NY, Suffolk County, NY, Westchester County, NY, Cincinnati, OH, and Philadelphia, PA) and one Territory (Puerto Rico) have passed salary history bans.

The Washington State law provides that “Upon request of an applicant for employment after the employer has initially offered the applicant the position, the employer must provide the minimum wage or salary for the position for which the applicant is applying” and provides that “Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee’s new position.”

The timing differs from the California law, which requires that the pay scale information be provided after the applicant has interviewed.

The Washington State law provides some additional guidance on the definition of “wage scale” or “salary range”, noting that if there is no wage scale or salary range for the job, “the employer must provide the minimum wage or salary expectation set by the employer prior to posting the position, making a position transfer, or making the promotion.”

## Remedies

The new Washington State law allows for actual damages or statutory damages up to \$5,000, interest, costs, and attorney’s fees. The court may also order reinstatement and injunctive relief.

## What Should Employers Do?

The law will become effective on July 27, 2019, which is 90 days after the adjournment of the current Legislative 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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