



Adjusting to Changing Laws on Salary Disclosure

Delaware recently passed a law that took effect in December 2017 banning employers from asking applicants about their current compensation and their compensation history. This adds to a wave of salary laws over the past few years by Massachusetts, New York City, Philadelphia, Oregon, Puerto Rico, San Francisco, and a new beefed up law in California.

The goal is to narrow the gender wage gap. If a woman is paid less than a man doing the same job and a new employer bases her pay on her prior salary, gender discrimination can be perpetuated, according to the backers of many of the bills.

Historically recruiters have provided hiring companies current and sometimes past compensation history for applicants, along with their desired compensation for the new position. Because of the salary history laws, in many locations only desired compensation can now be provided by the recruiters unless an applicant volunteers to provide past compensation.

In response to these laws, clients in some of the locations have asked recruiters to verify that they, “refrain from asking any question during the interview process regarding the salary history of an applicant, or otherwise relying in any way on the salary history of the applicant in determining the salary, benefits, or other compensation for such applicant during the hiring process.” These laws and verifications aren’t nationwide but they do require an appropriate adjustment to classic hiring and recruiting questions.

It starts with the application. Multi-state and national recruiting firms often have boxes asking about past or current salaries. They must decide if they want to remove these boxes completely, or have different applications depending on the location of the position. Note that most of the laws address the hiring company and their location in the city or state’s jurisdiction. They don’t for example prohibit asking a California resident about salary history for a position in Texas, since Texas does not at this time have a law regarding asking for salary history.

Employers and recruiters are able to ask candidates, what are your compensation expectations for this position? And how did you arrive at those expectations? These questions can lead to a discussion on their research and if the applicant desires to disclose their current or past compensation, they are free to do so. In which case such history may be relied upon in determining the applicant’s salary, benefits, or other compensation. When recruiting for positions in locations with salary history laws, the recruiter is not permitted to “encourage or prompt” the candidate to disclose current or past compensation. It is strictly a volunteer option on the applicant’s part.

If an applicant asks for the anticipated salary, the new beefed up California law that takes effect January 1 specifically says the employer must give them a pay range for the job they are seeking. In other

locations, if the applicant asks for the anticipated salary, the recruiter may ask for his/her salary expectation and tell them whether it is within the range (or close to it) of the position.

The San Francisco ordinance also prevents employers in the city from releasing a current or former employee's salary without consent. After an employment offer has been made and accepted and compensation terms have been spelled out, other than San Francisco, most of these laws do allow for the confirmation of salary history information.

Many larger employers have the resources to conduct compensation surveys, or subscribe to compensation research services that can help establish a range for salary, competitive benefits, and other compensation. Smaller employers may need to rely on other resources such as their current employees' past compensation and knowledge of others' compensation, the research they can do, and the knowledge of industry compensation their recruiter brings to the table. Many recruiters are members of state and national organizations that provide industry knowledge and training on these subjects.

For more details about hiring laws in your city or state, or about compensation in your industry, please feel free to ask your Scientific Search recruiter to provide additional information. Employment laws are always changing or evolving and we see it as our responsibility to stay informed.

