

New California Laws Prohibit Salary History Inquiries, Expand Parental Leave

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Recently, California's Governor Jerry Brown approved of new legislation impacting California employers. Employers should take note of these laws, which address wage discrimination and expand unpaid baby bonding leave, to ensure compliance.

Salary Privacy Bill

Gov. Brown signed into law a bill banning California employers from inquiring about a job applicant's prior salary. The bill is directed at narrowing the gender pay gap in California. (Gov. Brown vetoed a similar bill in 2015.) The new law will take effect January 1, 2018 and applies to all private and public employers.

The new law does not prohibit applicants from "voluntarily and without prompting" disclosing their salary history to employers and, if they do so, employers can consider that information in determining starting salary. (However, note that the California Fair Pay Act forbids employers from relying on prior salary, alone, to justify any disparity in pay between employees of different sexes or races.) The new law also requires that employers provide the "pay scale" for a position if an applicant requests it. The term "pay scale" is not defined, and it is not yet clear how that term is to be interpreted (e.g., whether it includes only base compensation or also bonuses, benefits and other forms of compensation).

As such, California employers should remove any questions regarding prior pay from their job applications and new hire packets and avoid asking any such questions during the interview process. Additionally, employers should take note that California is part of a nationwide trend of equal pay legislation. Delaware, Oregon, Massachusetts, New York City, Philadelphia and San Francisco have all passed their own laws prohibiting inquiry into salary history. Other states and cities are considering similar legislation. Employers should make sure they are up to speed on equal pay legislation in all of the jurisdictions where they are hiring new employees.

New Parent Leave Act

Also newly enacted, the New Parent Leave Act expands parental leave to smaller businesses in California. The California Family Rights Act (CFRA) requires employers with 50 or more employees to provide 12 weeks of unpaid, job-protected leave to eligible mothers and fathers to bond with a new baby. The new law expands this requirement to employers with 20 or more employees. (The 12 weeks of baby bonding leave are in addition to time off for new mothers, under existing law, during the period of time they are disabled by pregnancy.) This requirement will also go into effect January 1, 2018.

In what could be a welcome addition for employers, the new law directs California's Department of Fair Employment and Housing to create a parental leave mediation pilot program. Once created, if an employer receives notice that an employee intends to sue for violations of the leave law, the employer can request mediation of the dispute, and the employee cannot file a lawsuit until mediation is complete.

Our attorneys have deep counseling and litigation experience on these issues. If you would like to discuss these issues further or

have questions about this alert, please contact one of the attorneys listed here.

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