

Legal Trends

Are Prohibitions on Salary History Inquiries Coming to an End?

One year ago, in this very Newsletter, we reported on recent legislative efforts to limit or prohibit employers from inquiring into a candidate's salary history, referencing new laws in Massachusetts, California, New York City and Philadelphia. In August of 2017 we reported on similar laws going into effect in Oregon, Delaware and San Francisco.

The trend appears to be continuing. Starting on January 1, 2019, employers in Connecticut -- where women are paid 82 cents on average for every dollar paid to men -- no longer will be permitted to ask applicants about their prior salary history. The new law also forbids employers from restricting employees' rights to discuss their compensation. Vermont recently passed a similar law that goes into effect on July 1, 2018.

Meanwhile, a Federal District Court in Philadelphia recently invalidated that City's salary history ban. The Court ruled that restricting inquiries into an applicant's prior salary violates an employer's right to free speech under the First Amendment to the Constitution. The Court also ruled, however, that employers could be barred from using such salary histories in setting compensation. The result is rather peculiar -- employers in Philadelphia are able to obtain salary history information directly from applicants, but they are not able to do anything with such information.

As it is premised on rights enjoyed by all employers under the United States Constitution, the Court's rationale easily could be adopted by other Courts. It remains to be seen whether other jurisdictions will continue to implement similar laws or whether the recent ruling in Philadelphia is a harbinger of things to come.

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