



Equal pay legislation banning salary history questions

Are you ready?

About the law.

New York and California along with 20 other jurisdictions are each in the process of passing laws or executive orders prohibiting public and private employers from inquiring about a job applicant's pay history. California goes a step further to require employers to provide a salary range when requested by applicants that may be adopted by others shortly. These laws consider pay history to include the applicant's current or prior wage, benefits, or other compensation, but does not include objective measures of the applicant's productivity, such as revenue, sale, or other production reports. While these laws across each jurisdiction are all based on the same underlying idea, there may be nuances that make it difficult to implement a one-size fits all approach to compliance. Companies need to ensure their current practices are compliant in their respective jurisdictions that consider the overall implications to people, process, structure and technology.

By not being able to rely on asking these questions, the Talent Acquisition (TA) function is tasked with creating a profile about the candidate to capture their potential to impact overall productivity and then match those judgements to each of the elements available to them within your compensation offer.

In New York City, the new law will be enforced by the New York City Commission on Human Rights, which will investigate complaints made under the law. The Commission may impose civil penalties ranging from \$125,000 for an unintentional violation up to \$250,000 for an intentional, malicious violation³

How should your company respond?

It is now time for companies to consider what this means and how this could impact their hiring of new talent. What are the legal risks that should be accounted for in the hiring process, and how does an organization train and prepare its frontline recruiters and hiring managers for this change? In addition to training recruiting teams, the impact on the recruiting function is likely widespread, ranging from how you are structured, how you operate, how your processes are outlined and finally the overall role of technology. Ready or not, this legislation is here and your time to act is now.

Companies should consider five key areas that may be impacted and need to be actively managed.

1. Realigning recruiting and onboarding processes

Companies should consider undertaking a comprehensive review of their recruiting and onboarding processes to identify where candidate salary information is inquired about or collected. It's not uncommon to see job applications, both paper and online, that ask candidates for their current and past salary. Candidate screening interviews may also inquire about candidate salary, or this information may be collected as a part of the offer preparation process. These common practices should be reexamined. Very often, a candidate's current salary is verified by external vendors during the background check process or up-front by a headhunter. All such processes should be identified and updated along with the related documentation.

Companies hiring across the US may need to decide if it's best to implement these changes across the country or in pockets as defined by legislation. In making this decision, organizations

should weigh the costs and change management efforts associated with implementing standard process changes across the organization against the complexity that managing location-specific recruiting processes within the US may bring. Decision makers should also consider the volume of jobs that are location independent as well as anticipated hiring needs in states that have passed equal pay legislation.

2. Managing change with proactive communication and capability building

Apart from the legality of being compliant, companies should consider this as a change management opportunity as well as the opportunity to build new capability in your TA function. Everyone that touches the recruiting and onboarding process should be informed of the new regulation and understand how these changes impact them. To do this a robust communication program needs to be created that brings your team along in the journey and impacts their level of understanding. There is also an opportunity to add new capability to the function that enables recruiters to adjust their practices to be compliant with these new laws and also create compensation offers that are based on the evaluation of a candidate's potential and ability to impact productivity amongst other key characteristics. Capability building alone will likely not be enough, and monitoring progress will be needed to create constant feedback to avoid potential financial penalties. Based on the organization, the audience for this may include hiring managers, recruiters, interviewers, onboarding staff, third-party assessment vendors, background check vendors, candidate sourcing agencies, and possibly more. Organizations should also make any necessary updates to interview guidelines, training materials, and related policies to align with the changes. All of these elements should be included in any communication plans and capability building initiatives.

3. Updating compensation guidelines and tools

Recruiters have relied on current compensation as key input data to determine offer compensation. It's not uncommon to see company guidelines about exception approval if the proposed compensation is higher than a certain percentage of the candidate's current compensation. Under the new laws, this familiar narrative must be flipped on its side. The new mindset for many companies is two-fold; Companies will need to rely more heavily on acquiring quality market data through crowdsourcing, traditional compensation surveys and other channels to determine what the position pays in the market in real time. Companies should also consider establishing robust offer-determination guidelines and tools that focus on the skill and experience of the individual being offered the position to determine the offer amount and not on his or her previous compensation.

This framework to evaluate the individual's skill, experience, and potential impact will not only be necessary to stay compliant but will likely also create new expectations and require certain skills of recruiters to deliver on these expectations. This is a key cross-HR alignment and

collaboration opportunity, where Rewards functions can educate and enable recruiters with tools and guidance about offer preparation to help smooth adoption. Without this framework, companies may risk overpaying for jobs, potentially impacting offer acceptance rates and, in the long term, increasing internal pay disparity.

4. Updating vendor contracts

There is an immediate need to identify all stakeholders affected by this legislation and the potential impact they will have on the company's overall compliance with the new legislation. This includes reviewing existing vendor service agreements and updating them to specifically address the vendors' liability in cases of noncompliance. It is the company's responsibility to understand and address gaps in process, communication, and training of their vendors, and their vendor's external partners, to help ensure compliance. For example, salary verification may be a part of data collection during a background check. However, as this is eliminated from the scope of work, there may be an impact on the vendor's overall service cost. In another example, a sourcing vendor's contract may need an additional clause affirming the vendor's liability if it seeks or collects candidate salary information from sourced candidates. Adherence to this process is becoming top of mind for these vendors, and verifying that candidate-related data collection is being completed in accordance with new legislation will be essential for organizations looking to remain compliant.

5. Practicing active governance to help ensure adherence

One way to help ensure successful adoption of the change is regular monitoring and ongoing tracking of the outcomes related to these new practices. For example, once the Talent Acquisition capability material is updated in line with the equal pay legislation, all subsequent updates should also confirm adherence. Similarly, guidelines on the legislation and its impact on interview questions should be a standard module in interviewer training as well as other training focused on improving recruiter capability. Ongoing review of data collected by vendors is warranted to confirm compliance. As a result, serious legal and financial risks of noncompliance, HR leadership should act as the governing body for monitoring adherence and escalations.

The trend toward equal pay legislation will likely continue and only become more formalized in more cities and states. The idea of eliminating bias is not new, but the enforcement and elimination of the use of previous salary data is, and this change will likely require new capability from Talent Acquisition and new steps to confirm vendor compliance. Companies should view this legislation as an opportunity to update hiring manager and recruiter capability training, update the associated business processes and compensation guidelines, review vendor contracts and revise as needed, and create an effective approach to governance in this area.



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