

Salary History Bans Are Sweeping the Country

by Dennis J. Merley - Thursday, October 24, 2019



It was not long ago that virtually every employment application in use asked applicants to state their current (or last) salary. Now, that same inquiry is illegal in [eighteen states](#), [Puerto Rico](#) and [almost two dozen large municipalities](#) around the country. Could Minnesota be in line to do the same?

Salary history bans (which also apply to non-salary wages or other forms of compensation) are premised upon the belief that salary decisions of previous employers could have been rooted in bias or discrimination. Using those decisions to set current pay levels may lock females and people of color into continuing and perhaps permanent patterns of pay inequity that do not give full recognition to relevant skills and experience.

What the Legislation Does

The most recent example of a salary history ban is the [State of New York's legislation](#) scheduled to take effect on January 6, 2020. The law bars employers from requiring salary history as a condition of new or continuing employment. Employers are also barred from seeking such information when verifying employment or obtaining references unless and until a conditional offer of employment has been made.

The salary history bans in other states all tend to offer the same sorts of protections against requiring disclosure of salary history or using such information to make salary decisions. However, many of these laws contain minor variations. [Washington](#), for example, requires that employers of 15 or more employees must provide applicants with the minimum salary applicable to the job they are seeking. [Illinois](#) prohibits employers from requesting salary history but allows them to discuss salary expectations with employees. A number of states permit employers to

discuss and consider salary history if the applicant voluntarily discloses it.

Localities Get Into the Act

In addition to the eighteen states, a number of large cities and counties have also enacted their own versions of salary history bans. New York City, Philadelphia and St. Louis County (MO), for example, apply their bans to all employees working within their city/county limits. Others, such as Atlanta, Chicago and Westchester County (NY), passed regulations affecting only city or county employees.

Interestingly, two states (Michigan and Wisconsin) passed legislation prohibiting cities, counties and other local governmental entities from enacting their own salary history bans so as not to create an obstacle course of local and conflicting legislation for employers to navigate. Nevertheless, Michigan also has implemented an executive order forbidding the use of salary histories for state agency applicants and employees.

Bottom Line

Salary history bans have only been on the books since 2017 so the movement has taken off very quickly. Given Minnesota's penchant for leading the parade when it comes to employee-protective legislation, we wonder how long it will be before the Gopher State joins the ranks.