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California's Proposals to Expand its Equal Pay Protections . . . Again: Third Time's the Charm

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With [amendments to the California Fair Pay Act \("CFPA"\)](#) in effect for less than six months, the state legislature has introduced three new bills to further expand the state's equal pay laws.

Past Salary History Inquiries Prohibited. Once again, the state legislature has proposed a bill to prohibit employers from seeking salary history from applicants. The proposed bill also would require private employers to provide the pay scale for a position, upon an applicant's request. [Assembly Bill \(AB\) 168](#) is the third attempt by the legislature to pass a bill addressing requests for salary history.

In 2015, AB 1017 was vetoed by Governor Jerry Brown. At the time, Governor Brown said AB 1017 would prohibit employers "from obtaining relevant information with little evidence that this would assure more equitable wages." Governor Brown wanted to give the CFPA "a chance to work before making further changes." The next year, the legislature revised AB 1676 before it reached the governor. The legislature removed the ban on asking for salary history and instead included a perhaps more palatable requirement that salary history shall not, by itself, justify any wage differential.

This time around, Democrats control both the California State Senate and Assembly. More importantly, Democrats have gained a supermajority which means they can vote to override any bills vetoed by Governor Brown. Thus, this may be the year that California joins other jurisdictions like [Massachusetts](#), [Puerto Rico](#), and [New York City](#), and passes a law to prohibit employers from asking for applicants' salary history.

Gender Pay Differential Reporting Requirement. The second proposed bill, [AB 1209](#), would require employers to publish information on the difference between the median and mean salaries of male and female employees exempt under the white collar exemptions and between male and female board members. Employers would be required to publish this information by July 1, 2020, on a publicly available website. Employers thereafter would be required to update and republish the information annually by July 1.

In addition, employers would be required to submit this information to the California Secretary of State. This reporting obligation would apply to employers with more than 250 employees that are required to file a statement of information with the Secretary of State. As currently written, AB 1209 would impose no penalty on employers that choose not to publish this information.

Clarification on Application of CFPA. Lastly, [AB 46](#) would amend the CFPA to clarify that its provisions apply to both public and private employers.

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