A common inquiry in interviews and applications may soon land employers in hot water. States and municipalities across the country are passing legislation barring employers from asking job applicants about their salary histories, or using such information for the purpose of preparing a salary offer of a new hire. Several of these laws go into effect in 2018, and employers should be on notice of when and where they are in place.

While the laws vary between jurisdictions, they generally aim to prevent employers from asking salary-related questions or from screening job candidates based on salary histories until an offer is formally made to the applicant. Some of the laws have unique nuances, including prohibiting employers from contacting an applicant’s former company to confirm a salary amount without the employee’s written consent, even after an offer has been made. In California, employers must provide applicants with the pay scale assigned to the relevant position sought upon reasonable request by the applicant.

As we reported in June of 2017, the New York City Council approved legislation prohibiting employers from inquiring about a job applicants’ salary history, which became effective October 31, 2017. New York isn't alone. Several states, cities, counties, or localities have passed substantially similar legislation. Oregon's version of this law is already active, while a slew of acts will go into effect between the end of 2017 and the middle of 2018. They include:

- Delaware (effective December 14, 2017)
- Albany County (effective December 17, 2017)
- California (effective January 1, 2018)
- Puerto Rico (effective March 2018)
- San Francisco (effective July 1, 2018)
- Massachusetts (effective July 1, 2018)
- Philadelphia (planned effective date of May 23, 2017 stayed pending legislation challenging the constitutionality of the law).

Numerous other states and municipalities are following the trend. Over 20 states have reportedly proposed legislation prohibiting salary history questions, from Texas and Georgia to New York and Washington, D.C. Additionally, Pittsburgh and New Orleans have implemented similar laws that apply strictly to certain public workers.

Illinois juggled passage of a statewide ban on salary history with HB 2462, which was only recently resolved. After the Illinois House and Senate originally passed the bill with large bipartisan support, Governor Bruce Rauner issued a veto. The Illinois House voted to override the veto, but a November 9th vote in the Illinois Senate fell seven votes short of its own override, thereby letting the veto of the bill stand. The failure to pass it at the state level may provide an opening for Chicago or Cook County to pass similar legislation at the local level.

The laws are intended to close the gender gap between men and women, wading into territory normally covered by sex discrimination laws or equal pay acts. Employers in the jurisdictions implementing these laws will need to update their application forms. Further, hiring managers and interviewers will need to be trained to avoid questions prompting disclosure of salary at a previous position. Employers not yet impacted by the trend should
be on the lookout for proposed legislation within their own city or state.

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