

Hawaii on Board with Pay Transparency and Salary History Ban

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Hawaii will be joining the salary history ban trend beginning in 2019. On July 5, Governor David Ige signed into law a bill seeking to address the pay disparity between men and women who perform similar work.

Effective January 1, 2019, Hawaii employers with at least one employee in the state may not ask a job applicant about his or her salary history or rely on the applicant's salary history in determining salary, benefits, or other compensation during the hiring process or negotiation of an employment contract. Employers also may not bar employees from disclosing their wages or discussing or inquiring about the wages of other employees.

The new law expressly permits certain inquiries. An employer may discuss *compensation and benefit expectations* with the job applicant and inform the applicant of the proposed or anticipated salary or salary range for the position. The law also provides that "any objective measure of the applicant's productivity, such as revenue, sales or other production reports" may be discussed with the applicant.

If an applicant "voluntarily and without prompting" discloses salary history information, the employer may consider salary history in determining the applicant's salary and benefits and may verify the salary history. But employers using such "voluntarily" disclosed salary history information to set compensation must exercise caution because of the risk of litigation over whether the job applicant made a truly voluntary disclosure.

The administrative processes and remedies afforded individuals under Chapter 378 on unlawful discriminatory practices will apply to the salary history ban.

To ensure compliance with the law's requirements, employers should consider the following best practices:

1. Remove salary history questions from application forms, interview questions and hiring documents.

2. Train managers not to ask about an applicant's pay history during the pre-employment process – when they are screening or interviewing applicants.
3. Don't ask for or provide salary history information during reference checks; included in this restriction is other third parties, such as staffing agencies, acting on behalf of the employer.
4. Remove any prohibitions about salary discussions by employees from written policies.

In addition, for employers who operate in multiple jurisdictions, consider having a uniform practice across all jurisdictions by removing salary history questions during the pre-hire process.

Finally, to help set salaries that are appropriate for the market, consider using salary bands and external resources to research the market value of the position for which you are hiring, and conduct regular audits of your pay practices to ensure internal and external pay equity.

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