

Alert | Labor & Employment



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California Clarifies How Employers Can Use Salary History Information

On July 18, 2018, Governor Brown signed AB 2282, the Fair Pay Act Bill, into law to clarify Labor Code sections 432.3 and 1197.5 (also known as the California Equal Pay Act), which collectively dictate how employers can use salary history information of employees and applicants for employment. Existing law prohibits California employers from asking job “applicants” for salary history information and requires them to provide “applicants” with the “pay scale” for a position upon “reasonable request.” Existing law also prohibits employers from paying employees of one sex less than the other for substantially similar work and prohibits prior salary, by itself, from justifying any pay disparity.

AB 2282, which will take effect on Jan. 1, 2019, adds to and clarifies these laws in three key ways.

First, it defines the previously undefined terms, “applicant,” “pay scale,” and “reasonable request,” in Labor Code section 432.3. Specifically, “applicant” is an individual who seeks employment with the employer, not a current employee; “pay scale” means the salary or hourly wage range and it does not include bonuses or equity ranges; and “reasonable request” means a request made after the applicant has completed the initial interview.

Second, it clarifies that while employers cannot ask for an applicant’s salary history information, they may ask for an applicant’s salary expectations.

Third, it makes clear that an employer can still make compensation decisions based on an **existing employee's** current salary if any wage differential resulting from that compensation decision is justified by one or more specified factors, including a seniority system, merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than race or ethnicity, such as education, training, or experience.

The full text of the law, as amended, is available [here](#).

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