

# Client Alert

## California Bans Employers From Asking About Salary History Information

October 17, 2017

**Beginning January 1, 2018, California employers will no longer be able to ask prospective applicants about their salary history under a new law (A.B. 168) Governor Jerry Brown signed last Thursday, October 12th.**

The new law amends Section 432.3 of the California Labor Code and prohibits all employers, including state and local government entities, from seeking salary history information, including compensation and benefits about an applicant, either personally or through an intermediary. According to the new law, salary history may not be used by a prospective employer “as a factor in determining whether to offer employment . . . or what salary to offer an applicant.” In addition, employers will be required to provide applicants with the pay scale for the relevant position upon “reasonable request” – making California the first jurisdiction in the country with such a requirement.


The new law is aimed at ensuring equal pay rights by further closing the gender wage gap and continues the trend in California towards equal pay protection. Two years ago, the equal pay law in California was amended to require equal pay for “substantially similar” work and to prohibit the use of prior salary to explain compensation disparities in the workplace.

The new law does contain some exceptions. An employer may review salary history information that is publicly available pursuant to federal or state law. Moreover, salary history may be considered when an applicant “voluntarily and without prompting” discloses salary history to a prospective employer. If that information was voluntarily offered by the applicant, an employer may use that history in establishing that applicant’s salary level. However, the applicant’s prior salary, by itself, cannot justify any disparity in compensation.



**Howard E. Cole**  
Partner  
702.949.8315 direct  
[hcole@lrrc.com](mailto:hcole@lrrc.com)  
[lrrc.com/Howard-Cole](http://lrrc.com/Howard-Cole)

Howard Cole’s practice includes both traditional labor law and employment law and litigation. His practice is limited to exclusive representation of employers in both the private and public sectors, including gaming, health care, public agencies, construction companies, and dozens of other industries.



California employers should take special care in complying with the new law. Below is some pragmatic steps that employers can follow:

1. Clearly, an employer may not directly ask candidates what they have earned in previous jobs. But employers also may not ask their current or former employers or third party recruitment firms for the same information.
2. Prior to January 1, 2018, employers should review their internal forms and documents that may include pay history information, including applications for employment and applicant background checks. Employers should also review the scripts that recruiters may be using for recruitment to ensure that salary information is no longer being requested. This may require some retraining of personnel in terms of identifying questions that can no longer be asked.
3. Despite the limitations of the new law, an employer should be able to easily comply with the new statute yet still potentially secure candidate information. In these circumstances, it is recommended that an employer simply replace/delete their salary history questions by asking applicants how much they would like to be paid which gives employers comparative information on market competition as well as an applicant's self-perceived value without violating the law.