

Re: CLIENT ADVISORY 2018-03  
**Banning Salary History – A Best Practice?**

Massachusetts, effective this July 1, joins California, Delaware, and Puerto Rico banning employers from asking about an applicant's salary history.<sup>1</sup>

In Massachusetts:

1. Employers may not ask about an applicant's former salary prior to a hiring offer with a proposed salary (note – employer can ask after this point, and the law does not prohibit applicant from voluntarily disclosing);
2. Employers may not prohibit employees from disclosing or discussing their wages; and
3. Employers may not retaliate against an employee who exercises his or her rights under the Massachusetts Equal Pay Act ("MEPA").

In addition, the Massachusetts Attorney General's office has issued MEPA guidance, a pay calculation tool, and instructions.<sup>2</sup>

The incentive for undertaking the recommended equal pay analysis – a complete defense to any MEPA claim.

Recruiters and HR professionals are mixed on whether salary history bans will eliminate the gender pay gap.<sup>3</sup>

Is Maine next?

During the 2017 Maine Legislative Session, a bill like the Massachusetts law was passed and then vetoed by the Governor.

Keep in mind, Maine already has an equal pay statute. 26 M.R.S. §628 prohibits paying "at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work".

Given this milieu, Maine employers may want to consider the following strategies:

1. Conduct updated pay equality study. In doing so, consider employing the Massachusetts pay calculation tool and protecting your results by directing them to counsel.
2. Share pay bands with applicants to match expectations to compensation. This is required in California.

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<sup>1</sup> The trend includes Oregon (effective January 1, 2019), Philadelphia (restriction on inquiry struck down on free speech basis April 30, 2018, provision making it illegal to determine salary based on history upheld), San Francisco (effective July 1, 2018), and Westchester County New York (effective July 9, 2018).

<sup>2</sup> The three referenced Massachusetts documents are attached.

<sup>3</sup> In 2017, women earned 82 percent of what men earned according to Pew Research Center analysis.

3. You can still ask about compensation expectations; this is permissible even under the new laws.

**Impairment detection training for supervisors:** Maine DOL is offering substance-abuse detection training; announcement with registration link also attached in case you missed it!

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