CLIENT ALERTS & INSIGHTS

New Law Pushes Envelope on Salary History Bans

MAY 16, 2019

Authors: Margo Wolf O'Donnell

On May 9, 2019, Washington became the ninth state to enact a law prohibiting employers from inquiring about applicants' salary histories. However, the Washington Equal Pay and Opportunities Act (the "Act") goes beyond the standard protections for applicants—the Act creates affirmative responsibilities for employers, as well.

Washington joins California, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Oregon, and Vermont, as well as several localities in other states, in prohibiting employers from collecting information about applicants' previous salaries. Previous pay equity laws already prohibited Washington employers from using prior salary information to justify differences in pay. The new law goes further, prohibiting employers from seeking or collecting, as well as considering such information. Once the Act takes effect, employers can only confirm an applicant's salary history if voluntarily disclosed (without solicitation), or after negotiating an offer of employment (including compensation).

In addition to prohibiting employers from seeking salary history information from applicants, the Act also requires employers to provide pay scale information to applicants. In this regard, Washington joins only California (2018) and Cincinnati, Ohio (2020) as the third jurisdiction nationwide to foist affirmative obligations regarding wage information upon employers. The Act requires employers, upon request of an applicant after an initial offer of employment, to provide minimum wage or salary information for the position being sought. Moreover, unlike the other jurisdictions, Washington employers will also be required to provide such information, upon request, to employees offered internal transfers or promotions. Specifically, after offering an internal transfer or promotion, Washington employers will now be required to provide the wage scale or salary range for the employee's new position, upon request of the employee. The provisions requiring employers to disclose pay information only apply to employers of 15 or more employees.

The Act takes effect on July 27, 2019, and allows aggrieved applicants and employees to collect actual damages to statutory damages up to $5,000, injunctive relief, interest, costs, and attorney's fees. Before the effective date, employers should review all job applications and applicable pay scales for compliance with the Act.

For more information on this topic, please contact a member of the firm's Labor & Employment Practice Group.

Margo Wolf O'Donnell at modonnell@beneschlaw.com or 312.212.4982.