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In Certain Jurisdictions, Companies May Be Prohibited from Requesting or Providing an Employee's Salary History

By: John Ellerman

New York City is the latest legal jurisdiction to prohibit companies from inquiring about a prospective employee's compensation history during the recruiting process, joining 2 other cities (San Francisco and Philadelphia), 4 states (California, Delaware, Massachusetts, and Oregon), and 1 other jurisdiction (the Commonwealth of Puerto Rico) in implementing such legislation. These laws have been enacted by their respective jurisdictions to address compensation discrimination based on gender, race, and ethnicity.

These cities and states have incorporated different terms and provisions in their respective legislation. Additionally, some jurisdictions have salary history bans which are currently in effect, whereas other jurisdictions' laws are scheduled to take effect at a specified future date. It is our understanding that 18 other state jurisdictions are in the process of introducing similar legislation.

Broad Implications

As noted earlier, the terms and provisions of the salary history prohibition laws vary considerably from jurisdiction to jurisdiction. Some of these laws may include such terms and provisions as:

- A ban on disclosing any elements of compensation, including salaries, bonuses, stock grants, employee benefits, and retirement plans;
- A ban on disclosing compensation to a prospective company seeking to hire a job applicant by a current employing company;
- A ban prohibiting companies from searching public records or the internet for information about a candidate's compensation history; and
- A ban prohibiting companies from exchanging certain employee compensation during a potential merger and acquisition transaction.

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Seek Advice of Legal Counsel

Pay Governance LLC is a management consulting firm; as management consultants, we are precluded from providing clients with formal legal or tax advice. Given the nature of this issue and its potentially far-reaching human resources implications, we recommend that you seek the advice of qualified legal counsel should you have questions regarding its subject matter.

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