

3 questions on pay equity

Where does the fight over pay equity stand?

Q. I keep reading about pay equity and legislation designed to address it. What's involved in the most recent legislation?

A. Pay equity legislation is burgeoning. In 2017, several jurisdictions approved bans on salary history inquiries, and the trend continues in 2018. It is likely that more jurisdictions will follow suit and enact salary history inquiry bans. Many states and localities have such legislation pending, and it is likely that some of these laws will pass.

With these new laws and legal developments, employers will face new challenges in developing policies and procedures that comply with these laws—that vary from jurisdiction to jurisdiction—while deciding how much to pay newly hired employees.

In April, the 9th Circuit Court of Appeals issued an *en banc* decision in *Rizo v. Yovino*, holding that prior salary does not qualify as a “factor other than sex” to justify a pay difference under the Equal Pay Act. The decision appears to support the thinking behind the salary history bans.

How should we adjust to this trend?

Q. What are some preliminary steps employers can take to address bans on salary history inquiries?

A. There are several steps employers should take to keep track of this issue and make the necessary organizational changes:

- Implement a process for keeping abreast of salary history ban legislation.
- Convene a group consisting the HR, recruiting, and compensation staff to analyze hiring practices and compensation decisions that rely on salary history.
- Review policies and procedures that apply in the affected jurisdictions. Should you modify them?
- Train recruiters and hiring managers (and anyone else involved in the interview and hiring process) regarding the policy and procedure issues regarding salary history inquiries.

There are several compliance pitfalls employers need to understand. People who are involved in “informal” recruiting activities such as networking events, informal lunches and dinners, etc., may not understand that asking about a prospect’s current compensation may be a problem.

Also beware if you ban asking about salary history only in jurisdictions that prohibit it. It may be difficult to ensure that there is no “cross-contamination” between jurisdictions—especially if the same people are responsible for recruiting and compensation decisions across jurisdictions.

What should we do now to ensure pay equity?

Q. What further steps can employers take to improve equity in compensation decisions in

jurisdictions that ban salary history inquiries?

A. Companies may want to implement written policies and procedures regarding compensation decisions. The policies should identify legitimate factors (that comply with the law) that may be considered when setting pay.

Employers may want to use pay ranges to set starting salaries. Although pay ranges may not work for all businesses, applying them to particular jobs limits hiring managers' pay-setting discretion and therefore variations in pay.

If you decide to implement a pay-range system, provide decision-makers with guidance about how to make pay decisions within the applicable ranges. They should use objective factors wherever possible. Require decision-makers to articulate any subjective factors they considered.

Another proactive compliance step is to consider working with your attorney to conduct a privileged pay equity audit that assesses legitimate compensation factors and identifies potentially problematic disparities. Such an audit can provide with an opportunity to correct problems before they lead to liability.