

## Illinois Latest Among Wave of States to Ban Salary History from Hiring Process



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On January 15, 2019, Illinois's new Governor J.B. Pritzker signed an executive order prohibiting state agencies from asking job candidates about their salary histories. Illinois joins 10 states,<sup>1</sup> Puerto Rico, and 10 local governments that have adopted some version of a salary history ban since 2016. More states, especially those affected by the "blue wave" in the November 2018 election like Colorado and Maine, are expected to follow suit in the coming year.

The elimination of past and present pay information from the job application process has been a topic of debate among human resource professionals for many years. Proponents of the ban believe that employers' reliance on candidates' pay levels in hiring and salary decisions contributes to the pay disparity between men and women, and women of color in particular. Women, due to family obligations, are statistically more prone than men to leave and reenter the workforce, causing a negative effect on salary growth. When initial pay is set based on what a new hire was making at his or her last job, this negative effect is perpetuated. In an effort to even the playing field, Illinois and several other state and local governments have decided to remove the salary history question from the equation altogether by prohibiting that any inquiry is made.

Opponents of the ban, on the other hand, point to the fact there is little proof that salary history bans, standing alone, are effective in overcoming gender-based pay disparity. When the city of Philadelphia attempted to implement such a ban on employers in its jurisdiction, the Chamber of Commerce successfully challenged the ordinance on the basis that there was insufficient evidence to establish that the limitation implemented by the local government advanced the governmental interest of reducing wage disparity. Nonetheless, the tide of legislation is moving toward more limitation on the inquiry rather than less.

Although Illinois's order is limited to state agencies, private employers with Illinois employees are not out of the woods. The trend shows that legislatures are gradually broadening the applicability of their salary history bans. In Illinois, a bill extending the salary ban to **all** employers operating in the state passed through the General Assembly in 2017 and 2018 only to be vetoed by ex-Governor Rauner. The state house and senate sponsors of this proposed law have publically expressed confidence that it will pass through the legislature again in 2019, and that Governor Pritzker will sign it.

A salary history ban will require significant adjustments in most employers' hiring protocol. One valid concern employers have about the ban is that they will no longer have the option of using salary history to test the validity of an applicant's unqualified endorsement of their own competence. On the other hand, employers may stand to benefit from a hiring process blind to candidates' pay level. The employer's reliance on salary history can be (and has been) used by employees as evidence in pay discrimination lawsuits. For employers looking for relatively simple ways to eliminate bias and avoid litigation, the salary ban forces employers to focus more on candidates' aptitude and experience. Moreover, without access to prospective employees' last salary, employers are encouraged to set initial offers based not only on the individuals' qualifications but also on what they are already paying employees in similar roles at the company. This salary-blind hiring approach provides employers the opportunity to construct more uniform and fair compensation structures company-wide.

Given that salary history bans appear to be the way of the future, Illinois employers in the private sector should begin to take stock of the role that salary information plays in their hiring process. Examples of measures an employer can take to remove the salary history from their hiring procedures include removing questions about current salary level from applications, re-training

personnel involved in hiring, and incorporating the prohibition into screening and interview policies.

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<sup>1</sup> California, Connecticut, Delaware, Hawaii, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, and Vermont