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NEWSLETTER

CALIFORNIA EMPLOYMENT LAW UPDATE: ASKING THESE QUESTIONS COULD BE ASKING FOR A LAWSUIT

Governor Brown recently signed two bills regarding the hiring process. Effective January 1, 2018, it will be against the law for employers to ask applicants about their prior salary or their criminal history.

On October 12, 2017, Governor Brown amended Labor Code section 432.3 to prevent questions about an applicant's salary history. The ostensible purpose is to prevent the perpetuation of discrimination based on race or gender in pay and to push employers to offer salaries based on market value.

The new law therefore prohibits all Californian employers, including state and local governments, from seeking information about an applicant's prior salary, compensation, or benefits. This means employers cannot ask for an applicant's prior salary or use information about an applicant's such salary in the hiring process. While the law does not prohibit an applicant from voluntarily disclosing salary history or related information, the employer may not consider or rely on that voluntary disclosure in determining salary or whether to make an offer.

Additionally, the employer "upon reasonable request, shall provide the pay scale for a position to an applicant." Employers cannot take adverse actions against an applicant who makes such a request. To address this, employers should consider the "pay scale" for the position at the start of the hiring process and consider preemptively including salary ranges in job postings.

California already prohibited employers from considering some information about an applicant's criminal history, such as arrests that did not result in convictions. On October 14, 2017, Governor Brown amended Government Code section 12952 to prevent employment discrimination based on an applicant's criminal conviction history. This law makes it illegal for employers to include questions seeking disclosure of criminal history on any employment application, or to consider the criminal conviction history before extending a conditional offer of employment.

There is a notable exception: after making an offer, an employer may check the potential employee's criminal history. If an employer then chooses to withdraw the offer based on the applicant's criminal history, the employer must be able to justify that decision by showing the conviction has a direct and adverse relationship to the duties of the position. Furthermore, the employer must give the applicant the opportunity to dispute the accuracy of the information in their criminal record and provide an explanation. If the employer denies an applicant because it unjustly relied on the applicant's criminal conviction history, the law allows the applicant to sue the employer under the Fair Employment and Housing Act. Contact us to learn more about these and other requirements when you hire.

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