

Re: CLIENT ADVISORY 2019-02

## **Ban on Compensation History – Doesn’t Preclude Matching Expectations to Pay**

To narrow the pay inequality gap and to bolster existing Equal Pay laws, Maine recently passed 2019 Pub. Law Chapter 35 (L.D. 278): “An Act Regarding Pay Equality”.<sup>[1]</sup> This law, which will likely be effective September/October 2019<sup>[2]</sup>, bans employers from asking about compensation history.

Several of you have inquired how this will be applied and if you can still obtain essential hiring information.

### **Maine Ban on Compensation History Inquiry**

Keep in mind, Maine already has an equal pay statute. 26 M.R.S. §628 prohibits paying “at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work”.

These new provisions are being added to the Maine Human Rights Act and the Maine Labor Code. They bar Maine employers from inquiring into a prospective employee’s compensation history, directly or indirectly, from the applicant or by contacting the prospective employee’s current or former employer. This restriction only applies prior to making an offer of employment which includes all terms of compensation.

There are three exceptions: (1) an offer of employment has been extended which includes all terms of compensation that have been negotiated; (2) an employee voluntarily discloses compensation history without prompting by the prospective employer; (3) such information is required to comply with state or federal law.

Once an offer has been made, the employer may ask about the employee’s compensation history.

Under the Maine Human Rights Act, an employer’s inquiry about compensation history will constitute evidence of unlawful employment discrimination.

This law also broadens the pay transparency statute, 26 MRS §628, by banning employers from restricting employees disclosing their own *or another employee’s wages*.

Violation of the labor code section appearing at 26 MRS §628-A, exposes an employer to a fine not less than \$100 nor more than \$500 per violation.

### **Other States with Similar Laws**

Other New England states have recently enacted similar legislation including, Massachusetts, Connecticut, and Vermont.<sup>[3]</sup> Three counties in New York (Albany, Suffolk, and Westchester) have also enacted such laws.

### **Practical Suggestions:**

Maine employers should consider the following strategies:

1. Eliminate from your application any request for compensation information (rate of pay or salary).
2. Ask for pay expectations, not past compensation history. This law **does not** limit an employer asking about a prospective employee's compensation expectation.
3. To avoid wasting the interviewer's and candidate's time consider advancing the expectations inquiry in the application process.
4. Consider adding to your online or physical application:

Company supports and complies with Maine's 2019 Pub. Law Chapter 35 "Pay Equality Act" restricting us from asking an applicant or the applicant's employer for your compensation history. Instead, to reduce the potential for a mismatch between what you hope to earn and what we pay for the position for which you are applying, please indicate on an hourly, weekly or annual basis what you expect to earn: \_\_\_\_\_ / hourly\_\_weekly\_\_annually\_\_ (check one box)

5. Share with applicants the pay band/range for the position sought establishing a no-haggle paradigm.<sup>[4]</sup>
6. Using up-to-date pay studies, match compensation to market rates for similar positions.

#### Footnotes

<sup>1</sup> HR experts are divided on whether these type of laws will reduce the gender pay gap.

<sup>2</sup> For nonemergency legislation, new laws take effect 90 days after the Legislature adjourns. This date has not yet been determined.

<sup>3</sup> Outside of New England, California, Delaware, Hawaii, and Oregon have passed these laws.

<sup>4</sup>This is a requirement under California law.

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