

## Equal Pay Legislation Trends: Banning Inquiry into Pay History

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Lawmakers have been busy proposing equal pay bills in jurisdictions all across the country. These bills are part of a growing national trend aimed at closing the pay gap between men and women. With that goal in mind, some lawmakers are now targeting hiring practices with measures that would restrict employers from asking job applicants about pay history. The rationale behind such legislation is that basing pay decisions on pay history will perpetuate past pay disparities. If enacted, the new measures would presumably encourage employers to base salary on job requirements and market rates. As the patchwork of equal pay laws continues to emerge in cities and states across the country, managers should pay close attention to how these new laws impact their hiring practices. Jurisdictions that have enacted and/or proposed pay inquiry legislation are discussed in this briefing.

### Enacted Laws on Pay History

In 2016, Massachusetts and California both enacted legislation that focuses on a job applicant's pay history data.

#### Massachusetts

In August, Massachusetts became the first state in the nation to enact a law that bars employers from inquiring about pay history. Effective in 2018, the [Massachusetts Pay Equity Act](#) will prohibit hiring managers from screening applicants based on pay history as well as inquiring into prospective employees' past or current compensation, except to confirm the information where: (a) the prospective employee has volunteered it, or (b) where the employer has already made an offer of employment that includes compensation. Likewise, an employer may not require that a prospective employee's prior compensation history meet certain criteria. For more information, see our client briefing [Massachusetts Passes New Pay Equity Law](#).

#### California

California followed Massachusetts' lead in September when Governor Jerry Brown signed Assembly Bill (AB) 1676 into law. As proposed, the bill would have barred inquiries about pay history, much like its Massachusetts counterpart. As approved, however, AB 1676 bans employers from using an applicant's pay history information to justify wage disparities between men and women who do substantially similar work. While the new law does not ban

inquiries into pay history, it does restrict how employers can use that information. For more information regarding recent California employment legislation, see our client briefing [California Employment Legislative Update](#).

## Proposed Bills on Pay History

Lawmakers in other jurisdictions across the country—including New Jersey, Pennsylvania, Washington D.C., New York City and Philadelphia—have proposed similar bills that would regulate how employers obtain and use pay history information.

### New Jersey

In September, New Jersey legislators introduced a bill (A-4119) with the stated purpose of promoting equal pay for women. The bill would ban employers from asking job applicants about wage and salary history until after extending an offer of employment. The bill would also ban employers from setting min and max past pay levels as criteria for extending an interview or making a job offer.

### Pennsylvania

Over the last year, lawmakers in Pennsylvania's House of Representatives have proposed several equal pay bills, including House Bill (HB) 1160, that would amend Pennsylvania's Equal Pay Act. Like the New Jersey bill, HB 1160 is specifically aimed at getting employers to base their pay decisions on an employee's level of education, training, and experience instead of gender.

### Washington D.C.

In Washington D.C., lawmakers recently introduced the Fair Wage Amendment Act of 2016 (FWAA) ([B21-0878](#)) to amend the Wage Transparency Act of 2014. The FWAA would prohibit the screening of job candidates based on pay history, and it would bar employers from seeking pay history from an applicant's current and former employers.

### New York City and Philadelphia

In August, New York City lawmakers proposed a bill ([Int 1253-2016](#)) that would similarly prohibit employers from seeking the pay history of job applicants at any stage in the hiring process. If enacted, the new law would amend the city's Human Rights Law and bar employers from relying on pay history—including benefits—when making pay decisions. A Philadelphia councilman proposed a similar bill ([Bill No. 160840](#)) in September.

## Federal Bills on Pay History

In addition to these state- and city-level equal pay legislation trends, the United States Congress is also considering a nation-wide ban on pay history inquiries. The Pay Equity for All Act (HR 6030), introduced in September to amend the Fair Labor Standards Act, would prohibit managers from obtaining wage history information before making an offer. Under the bill, violators would be subject to civil penalties and special damages that are calculated on a per-violation and per-victim basis respectively. Like the local legislation, this bill is part of a growing political effort to close the wage gap in the United States.

As lawmakers across the nation increasingly make equal pay a political priority, legislation around pay history will likely expand to other jurisdictions. Employers will need to stay up-to-date with new laws and continue to evaluate their hiring practices to ensure compliance.

4 Min Read

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