

Hawaii Enacts Salary History Inquiry Law

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Hawaii Governor David Ige has [signed into law](#) a bill that will restrict employers from inquiring about applicants' salary history during the hiring process. In addition, the law prohibits employers from retaliating or discriminating against employees for, or restricting employees from, disclosing their own wages or discussing and inquiring about the wages of other employees. The law will take effect on January 1, 2019.

Under the new law, employers and their agents will be prohibited from:

- inquiring about an applicant's salary history, whether by asking the applicant him- or herself, or inquiring through the applicant's current or former employer or its employees or agents;
- searching publicly available records or reports to ascertain an applicant's salary history; and
- relying upon salary history to determine an applicant's compensation at any time during the hiring process—including the negotiation of an employment contract—unless an applicant "voluntarily and without prompting" discloses salary history information, in which case the information may be both verified by the employer and relied upon in setting compensation (subject to other applicable law).

For purposes of the law, "salary history" includes an applicant's current or prior wage, benefits, or other compensation, but does not include "any objective measure of the applicant's productivity, such as revenue, sales, or other production reports."

The law does permit employers and their agents, without inquiring about salary history, to engage in discussions about an applicant's expectations with regard to salary, benefits and other compensation.

The provisions of the law do not apply to applicants for internal transfer or promotion with their current employer, or to public employees whose compensation is determined pursuant to collective bargaining. The law further does not apply to any attempt by an employer to verify non-salary-related information via a background check or similar process, so long as any salary history information that is accidentally or incidentally disclosed during such process is not relied upon in setting compensation for the applicant.

The law amends the anti-discrimination provisions of the Hawaii Employment Practices Act, which provides for a private right of action for aggrieved individuals and remedies that may include injunctive relief, compensatory damages, and attorney's fees and costs.

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